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The interplay of urban land tenurial systems and its effects on the poor:

A case study of Manzini in Swaziland

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A thesis submitted in fulfilment of the requirement for the degree of Doctor of
Philosophy in Development Studies

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Institute of Development Studies

University of Sussex

I hereby declare that this thesis has not been submitted, either in the same or different form, to this or any other University for a degree.

Signature:

Date:.....

Picture of Moneni



Taken by the Researcher: December 2009

This picture shows part of the SUDP area (an informal settlement of Moneni): captures original homesteads and two temporary structures provided by the project to a family that needed to be resettled in order to accommodate infrastructural developments such as roads.

The interplay of urban land tenurial systems and its effects on the poor: A case study of Manzini in Swaziland

Abstract

This research examines the interrelationships between customary and statutory tenure systems in Swaziland, in relation to urban development. It also focuses on the assumptions, aspirations and practices of modern and traditional authorities in relation to the processes of urban development. The Swaziland Urban Development Project (SUDP) initiated in the late 1980's, to upgrade informal settlements of Swaziland's cities, is used to examine the extent to which these land tenure interrelationships impact on the residents and the upgrading of informal settlements. Implementation of the SUDP (insitu upgrading) in Manzini, only took place in 2007 – a decade after the original planned commencement date. This was because the traditional leaders of the informal settlements of Moneni area (an area where the project would be piloted), did not accept the project. Since the Government and the Municipal Council of Manzini did not want to use force (Municipal Council of Manzini, 2004) it entered into further negotiations. This study investigates why the project was not accepted, examines the role of the traditional leaders in the non-acceptance of the project and the changes in attitudes towards the project in 2007. In the process, it explores the diverse responses to the SUDP and the processes of negotiation between the traditional and urban authorities, demonstrating how both authorities fought for retention of their authority over the area and also for their own vision of 'development'. Such contestation resulted in protracted discussions on the part of the urban authorities, whilst the issue of authority remains inconclusive.

To investigate the impact of these interactions on the residents of the informal settlements, the study interrogates the assumptions of the development planners (project officials from Ministry of Housing and Urban Development (MHUD), City Councils and the World Bank) with regard to the benefits of the project. The different understandings of development priorities, different assumptions about the outcomes of the SUDP and the complex interactions that occur between formal and traditional structures have undermined efforts to improve living conditions of the urban residents. This study demonstrates that these assumptions of policy-makers and planners and their aspirations are colonially inherent and based on western thinking about modernisation. The implementation of grandiose plans and the making of a beautiful city are pursued, whilst residents lament that from their perspective there is 'no development'. In addition, the study takes cognisance of social differentiation - separately examining how women in the project area were affected by the project. This study therefore demonstrates that the main

challenge underlying the process of improving the living conditions of informal settlements' residents is the existence of different urban land tenure systems, managed by various authorities namely; urban authorities (government, municipalities) and traditional authorities, both asserting their legitimacy over the areas.

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Acronyms and Abbreviations

CANGO	Coordinating Assembly of Non Governmental Organizations
CIA	Central Intelligence Agency
DFID	Department for International Development
HSA	Human Settlement Authority
IBRD	International Bank of Reconstruction and Development
IIED	International Institute for Environment and Development
LA	Local Authorities
MDI	Moneni Development Initiative
MHUD	Ministry of Housing and Urban Development
MzCC	Manzini City Council
NDS	National Development Strategy
ODA	Overseas Development Agency
OSSREA	Organization for Social Science Research in Eastern and Southern Africa

PCU	Project Coordination Unit
POFS	Project Outreach Facilitators
PSC	Project Steering Committee
R.A	Regional Administrator
SDC	Sustainable Development Commission
SEA	Swaziland Environment Authority
SEB	Swaziland Electricity Board
SIDA	Swedish International Development Cooperation Agency
SNHB	Swazi Nation Housing Board
SNL	Swazi Nation Land
SUDP	Swaziland Urban Development Project
SWSC	Swaziland Water Services Cooperation
UMP	Urban Management Programme
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UN-HABITAT	United Nations Agency for Human Settlement
USAID	United States Agency for International Development
WLSA	Women and Law in Southern Africa Research Trust

Chapter One: The interconnectedness of urban land, growth and development

1.1 Introduction

Rapid escalation of urban growth rates in developing countries, such as Swaziland, has resulted in challenges in the provision of housing and services for the urban population, especially the urban poor (Rakodi 1997; Davis 2006; Huchzermeyer and Karam 2006; Todaro 2006), hence, the increase in slums.¹ Between 1950 and 2010, Africa's urban population increased from 33 million to 400 million people, in Latin America and Caribbean from 69 million to 465 million and in Asia from 245 million to 1,847 million (United Nations 2012). In Swaziland, in 2008, the urban population comprised 21.37 per cent of the total population of 1,186,056 (1 million) and the annual rate of urbanisation in the country was 1.7 per cent (CIA 2008; World Bank 2010). Sixty three per cent of the Swaziland population lives below the poverty line and 40 per cent is unemployed (UNDP 2011). The high rate of urban population growth, (5 per cent per annum 1985-1990) has resulted in high demand for land, and a subsequent increase in informal settlements and urban poverty in Swaziland's cities. Swaziland's informal settlements are concentrated in its two main cities, namely Manzini and Mbabane (Hoek-Smit 1988; Forster and Nsibande 2000; World Bank 2002). The government has long recognised the unplanned growth and lack of service provision in informal settlements and the co-existence of urban authorities and traditional authorities (MHUD 1996).

Challenges of urban growth have seen the Government of Swaziland embarking on initiatives to improve the living conditions of the informal settlements (known as upgrading) through the initiation and implementation of integrated urban development projects (MHUD Report to UN-HABITAT 1996; World Bank 2002). The government's focus has been on upgrading the informal settlements located in Manzini and Mbabane through 'urban development projects' (MHUD 1993; World Bank 2002; Sihlongonyane 2003). However, a major challenge underlying this process is the existence of different tenure systems

¹ Between the period 2000 and 2010 the number of slum dwellers globally increased from 776.7 million to some 827.6 million. Sub-Saharan Africa has the highest number of slum dwellers, 199.5 million (61.7 per cent of its urban population) whilst Southern Asia has 190.7 million (35 per cent) and Latin America and the Caribbean 110.7 million (23.5 per cent). During this same period, other developing countries, such as China and India, have improved the lives of more than 125 million, while the proportion of people lifted out of slums in sub-Saharan Africa is only 17 million, a decrease of the rate of slum dwellers by only 5 per cent (UN-HABITAT 2010/2011).

within the urban areas which are managed by various authorities namely; urban authorities (government, municipalities and city councils) and traditional authorities (chiefs and inner councils) (Forster and Nsibande 2000; Huchzermeyer and Karam 2006; MuzVidziwa and Zamberia 2006). Urban expansion in the country has resulted in incorporation of Swazi Nation Land (SNL) – conventionally classified as traditional and rural land – into the urban boundaries. Yet, these areas have continued to be administered by the traditional authorities, who act as custodians, distributing land to Swazis according to customary tenure regimes. The challenge faced by the government of Swaziland in relation to urban development projects, is that in spite of incorporation into the urban gazette areas, chiefs strive to retain their hegemony over the subjects (Peri Urban Growth Policy 1997; Swaziland National Physical Development Plan 1996-2006; Swaziland Poverty Reduction Strategy Programme 2006; SUDP Valuation Report 2008). This is particularly evident in areas where prominent Princes live. In such cases, the urban authorities have great difficulty in attempting to control the growth of the informal settlements (MHUD 1996; World Bank 2002; MuzVidziwa and Zamberia 2006). Planning informal settlements is also a challenge as traditional leaders use their legitimacy to resist plans from the urban authority (MHUD 1996; MuzVidziwa and Zamberia 2006; MHUD 2008). Contestations between the traditional and modern authorities are most heightened in relation to upgrading projects in informal settlements. This forces urban authorities to engage in negotiations with the traditional leaders, albeit sometimes unwillingly.

This study explores the interplay between statutory and traditional land tenure systems in relation to urban upgrading projects. It focuses on a particular informal settlement, named Moneni, and situated in Manzini, Swaziland's largest city, where implementation of the Swaziland Urban Development Project (SUDP) was piloted. This World Bank-funded project was initiated in 1987² and preparations started in 1989 (MHUD 1993; Lowsby and De Groot 2007) however, its implementation (installation of infrastructure) in Manzini only took place in 2007 – a decade after the original commencement date. This was because the traditional leaders of Moneni area were unwilling to accept the project and, since the Government and the City Council of Manzini (MzCC) did not want to use force (Manzini City Council 2004), it entered into further negotiations. This research investigates extensive delays in project implementation and its effects on the residents of informal settlements, exploring the diverse responses to the SUDP and the processes of negotiation between the traditional and urban authorities that finally made it possible to implement the SUDP nearly 20 years after its initial inception.

² The Government initiated the project in 1987 during a UNDP funded study aimed at identifying constraints on urban sector growth and development (Urban Development Project Evaluation 2008)

This study therefore contributes to the literature on Swaziland's experience of urbanisation, which is profoundly influenced by the historical experience of colonisation and by the resulting different systems of land tenure. Despite the extensive literature on land tenure systems in Swaziland (Kuper 1963; Potholm 1972; Matsebula 1976; Rose 1992; Levin 1997; Mushala 1998), less attention has been paid to urban land management or to the existence of dual tenure systems in urban areas. In addition, very limited research has been conducted on Swaziland's informal settlements. This is despite the fact that there are volumes of literature on informal settlements issues in developing countries (for example, Sanyal 1985; Cheema 1986; Gilbert and Gurgler 1992; Basset and Crammey 1993; Hindson and McCarthy 1994; Fekade 2000; Payne 2002). Furthermore, the available literature on urban land management and generic upgrading projects, which includes the SUDP, focuses on describing and evaluating different approaches employed by developing countries to improve settlements. Although a few scholars have acknowledged the existence of traditional or customary tenure systems within sub-Saharan Africa's urban boundaries (Mabogunje 1992; Fekade 2000; Toulmin and Quan 2000; Antwi 2002), there has been no investigation into how the interrelationships stemming from the multiple tenure forms affect the process of upgrading informal settlements, and in particular the residents. In the context of Swaziland, even those writers who make mention of the existence of traditional tenure in urban areas, do so in a passing manner (Forster and Nsibande 2000; Huchzermeyer and Karam 2006; Muzvidziwa and Zamberi 2006). The majority of writers give the impression that sub-Saharan Africa's customary tenure systems are all exactly the same, when in fact Swaziland has strong customs by virtue of being an absolute monarchy. This plays a crucial role in the relationships existing between the modern and traditional structures. Huchzermeyer and Karam (2006) recognise this and appreciate that this presents a challenge for the incorporation of informal settlements into the urban framework. They cite the 'strong traditional values' as the core challenge, but do not give an in-depth analysis. This research, which examines the interrelationships between customary and statutory tenure systems in relation to urban development, focuses on the assumptions, aspirations and practices of modern and traditional authorities in relation to the processes of urban development and, through this, explores the impact of urban development on poor residents of the informal settlements.

This study is set in the context of the literature on Urban Development Planning and Urban Land Tenure Systems on the basis that issues of informal settlements cannot be separated from development planning (Brown 2006; Lieberherr-Gardiol 2006).

1.2 Urban Development Planning

Developing countries are experiencing faster urban population growth than the developed countries with average annual growth below 1 per cent for developed countries and at a minimum of 6 per cent for developing countries (Todaro 2007). In addition, far larger percentages of the population live in urban slums in developing countries (McAuslin 1985; Hardoy and Satterthwaite 1989; Mabogunje 1991; Kombe 1994; Davis 2006). In sub-Saharan Africa 61.7 per cent of the urban population lives in slums; 35 per cent in South Asia, 28.2 per cent in East Asia and 23.5 per cent in Latin America (UN-HABITAT 2010). It is therefore important to recognise, as Gugler (1988) emphasises, that urbanisation does not itself cause development. Governments in these countries focus on urban planning as a means of addressing the urban challenges. Issues of informal settlements thus cannot be separated from urban planning (Brown 2006; Lieberherr-Gardiol 2006). Urban population growth leads to increased demand for land, housing, infrastructure and services, yet, city authorities are ill-equipped to provide these as they normally have a narrow revenue base and lack technological and administrative capacities (Smith 1986; Devas et al 1993; Rakodi 1997; Payne 2002; Champion and Hugo 2004). Urbanisation therefore, is neither good nor bad and it can have both positive and negative ramifications for affected populations depending on how the process is managed.

Planning is a continuous process involving decisions or choices about alternative ways of using available resources, with the aim of achieving particular goals (Conyers and Hills 1984). Planning has always existed, however, the accelerated growth of cities and increase of population warranted planning reforms which first surfaced in Britain (Cheema and Rondinelli 1983). However, the traditional approach, which is concerned with order and beauty, is largely inappropriate for developing countries' complex conditions (McAuslin 1975; Scott 1998) as it fails to effectively address the actual needs of the people. There has also been a concern that traditional urban planning is concerned with bringing order and controlled development to an area thus 'sweeping the poor away' (Watson 2009). International

organisations such as the World Bank³ in the 1980s put emphasis on privatisation, a principle resulting in exclusion of the poor and benefit to the middle class and politicians. The World Bank – influenced by scholars (Hardin 1968; Payne 1984; Desoto 1989), promoted titling in its programmes with the underlying assumption, originally drawn from rural development and agricultural productivity, that enabling markets would increase investment. Recent years have witnessed a shift from conventional approaches which promoted tenure regularisation and freehold titles to tenure security through long-term leases and or other measures (Durand-Lasserve and Royston 2002). However, urban land policies and tenure reforms are still based on private ownership through the allocation of individual property titles, hence, Peluso and Lund observe ‘the institutionalization of private property and the physical fencing off of common or state land turns common property landholders into trespassers by the stroke of a pen’ (2011: 674). The challenge still remains, as none of these approaches have successfully addressed issues of tenure and housing. The 99-year lease – currently favoured as a means to offer secure land ownership - is still based on individual property title and has high costs implications, and is thus unaffordable to the poor (Toulmin and Quan 2000; Durand-Lasserve and Royston 2002; Moyo 2005).

The traditional approach also views planning as a technocratic, apolitical process in which planners would just prepare physical plans without any pressure to consult with the affected communities. Consequently, planning was seen as a prerogative of the technicians and urban planners. The fact that the traditional approach was inappropriate for developing countries’ complex conditions was realised through the avalanche of challenges created through informal settlements (McAuslin 1997; Scott 1998; Rakodi 2002). The necessity of meeting the needs of particular categories of people, and of addressing broader socio-political and economic contexts, was also realised at this point. For instance, the World Bank and UNDP are now factoring the issue of good governance into Urban Planning (Watson 2009). There is a realisation that the process of planning does not occur in a vacuum but includes local political institutions

³ The involvement of an international organisation, the World Bank, in SUDP planning warrants the examination of its role. The role played by the ‘international organizations has never been more central to world politics than they are today’ (Barnett and Finnemore 2004: 1). The United Nations Human Settlements Programme (UN-HABITAT 2003) and the World Bank work in ‘partnership’ with the developing countries in formulations of programmes intended to help policy makers and local authorities evaluate and improve urban conditions. These international organisations are also instrumental in providing incentives to address, and monitor, the Millennium Development Goals. In particular, the drive to meet Goal 7, (Targets 10 and 11) which is about the reduction of at least 100 million slum dwellers by year 2020 and the reduction of the number of people without access to water by half (UN-HABITAT 2010), has influenced urban development processes.

such as city and suburban government and the political processes surrounding these governments (Allensworth 1975; Rakodi 2001; Pieterse 2008; Martin and Mathema 2010). This explains why development projects may end up serving particular political interests (Ferguson 1994). The apolitical nature of the development planning process denies the fact that development projects are, in essence, situations of cross-cultural encounter (Nolan 2002).

Furthermore, urban planning has to recognise the importance of social difference; and that local stakeholders have multiple and sometimes conflicting interests (Nolan 2002; Parnell 2002; Mapetla et al 2007). Yet, scholars continue to point out that urban planning does not take into cognisance how women are impacted by urban planning, and urban land tenure policies are frequently gender-blind (Berry 1993; Deere and Leon 1997; Forster and Nsibandé 2000; Payne 2002; Mehta 2009). In Swaziland, one of the factors limiting women's empowerment is access to land, for, according to Swazi custom, women cannot acquire access to Swazi Nation land (Rose 1992; Forster and Nsibandé 2000). Another category of people who may require particular attention in urban planning are the youth, who do not generally have rights to land and who are adversely affected by HIV/AIDS and high rates of unemployment; these issues are further discussed in Chapter Five of this thesis.

Linked to the issue of privatisation is that international organisations and developing countries' practitioners initially anticipated that the economic growth model, a theory that sees an inverse relationship between infrastructural investment and economic growth, would reduce urban poverty. Financing basic utilities and infrastructure projects would strengthen the economies which would in turn lead to economic growth necessary for housing development (Ramsay 2006; Sao and Dashb 2009). This failure has resulted in more attention being directed to issues of urbanisation and the environment to improve economic development (Gilbert and Gugler 1987; Werna 1995; Zetter and White 2002). In response to the challenge of urban poverty, at the UN-HABITAT conference held in Vancouver in 1976, nation member states embraced human settlements policies which put emphasis on tackling issues of urban poverty directly through the provision of low income housing and through facilitating sustainable development (UN-HABITAT 2006). The Vancouver conference led to a drift away from the forceful eradication of slums and informal settlements (Zetta and White 2002) an approach that had been initially used by many developing countries to address the challenge of informal settlements.

Since 1972, at the influence of Robert McNamara's (President of the World Bank) social lending policy which put emphasis on providing foreign aid to the poor countries, the World Bank's attention was drawn into tackling issues of urban poverty through the provision of loans and technical assistance to developing countries (Rakodi 1997; Ramsay 2006). Another approach embraced by developing countries

with the support of international organisations was the provision of public housing and sites and services programmes which also failed to address the demand for housing, especially for the poor, as they tended to be unaffordable (David 1986; Gilbert and Gugler 1992; Fekade 2000). The World Bank therefore supported projects based on affordability, replicability and cost recovery (Rakodi 1997). An alternative approach to the sites and services approach which was seen as more pragmatic and cheaper given the fact that the areas are already settled with many people were in-situ upgrading projects. Through these projects the World Bank sought to promote provision of secure land tenure in informal areas and improve infrastructure and service delivery (Gulyani and Connors 2002). The weaknesses of these approaches led to the initiation of the Urban Management Programme (UMP) which is discussed in detail in this study.

1.3 The Urban Management Programme (UMP)

Although development seldom focuses on urban areas, when it does the main approach has been one of urban management. The UMP is located within UN-HABITAT in Nairobi, Kenya and has regional offices in Africa, Asia and Latin America. The UNDP, UN-HABITAT and World Bank initiated the technical assistance programme as an effort to strengthen cities' and towns 'contributions towards human development, poverty alleviation, participatory governance, environmental conditions and economic growth (UN-HABITAT 2003). Many bilateral and multilateral organisations supported the Urban Management Programme, and these include the UK Department for International Development (DFID), Swedish International Development Cooperation (SIDA) and the Sustainable Development Commission (SDC). Beneficiaries of the programme were to be citizens of cities and towns in developing countries, especially the urban poor. The issue of participatory and accountable systems of urban management was emphasised (McAuslin 1997). The UMP aimed to tackle urban challenges including local governance, globalisation and growing inequalities (Swiss Agency 2004). It was seen as a way of providing aid in a more focused manner and supposedly without duplication to the developing world. The UMP linked policy to management tools and focused on three areas, namely, poverty reduction, urban environmental management and promoting urban governance. Two other areas of concern were included in the list later; land management and urban infrastructure management. The programme had four phases: Phase one focused on development of a policy framework during the period 1986 to 1991. Phase two ran from 1992 to 1995, and was concerned with formulation of programmes and action plans. The third phase ran from 1996 to 2001 and focused on decentralisation at local levels. The fourth phase, which began in 2001 and ended in 2004, occurred when different countries took over from the regional offices (Africa, Latin

America, Caribbean and the Arabic countries and Pacific) disseminating information and promoting participatory urban experience.

The UMP has been criticised for its lack of clarity and elusive nature (Stren 1991; Mattingly 1994; Werna 1995; McAuslin 1997; McGill 1998). It does not challenge the status quo but take on ‘board issues such as deregulation, an enabling role for the government, and privatization’ (Werna 1995: 355). It seems to focus on already-existing projects or resources. Due to the looseness of the term, he argues that research funding would be wasted. Stren acknowledges the effort made by Forbes Davidson and Peter Nientied to define urban management as ‘taking an active role in developing, managing and coordinating resources to achieve a town’s urban development objectives’, but argues that this is a subjective definition (cited in Stren 1991: 131). The approach is also criticised for embracing a sectoral approach whereas cities are characterised by interconnected and complex problems which require a multi-sectoral approach involving a wide spectrum of fields and urban professionals (Stren 1991). In a nutshell, critiques of the approach argue that the UMP failed mainly because it could not deal effectively with the complex nature of urban growth coupled with interconnected dynamics of urbanisation.⁴ Stren makes a strong argument that urban management is a western concept which cannot effectively help cities respond to the needs of the urban poor and neither can it help scholars better research the conditions of Africa (Stren 1992), which differ from those of the developed countries. This research aims to expand on this literature, showing politics and the intersection of different land tenure systems and its impact on informal settlement development. In so doing it provides new and least explored dimensions to the study of the urban poor.

1.4 Perspectives on land tenure systems

The term ‘tenure’ is believed to have originated from English feudal times and generally described as conditions under which something is held. Dekker (2003) defines land tenure as perceived institutional arrangements of rules, principles, procedures and practices enabling a community to define, determine how they will access, use and manage the land. This definition, which sees land tenure as the mode by which land is held or the set of relationships among people concerning land, fits with the work

⁴ The writers do acknowledge that the Urban Management Programme did cover some important issues such as decentralisation and participatory approach.

of Payne (2002), who also acknowledges that the co-existence of the different tenure systems presents a complex series of relationships.

The effective and efficient use of natural resources such as land is an indispensable precondition for not only economic growth and political stability but also sound and sustainable development (Toulman and Quan 2000; Van Asperen 2007). Empirical evidence reveals that before the 1980s the issue of urban land tenure in developing countries, especially in sub-Saharan Africa, received little attention and as such policy-makers, administrators and other professionals lacked a sound basis for reviewing and making new policies (Gough and Yankson 2000; Payne 2002; Gulyan 2007). However, recent years have seen considerable attention given to urban land issues and tenure security since they indirectly or directly affect the decision-making process about development. Access to land is seen as a key factor for provision of shelter and tenure security and is believed to lead to increased investment (Durand-Lasserve and Royston 2002).

The subject of land tenure in developing countries such as sub-Saharan Africa has gone through several phases (Platteau 1992; Basset and Crummey 1993). The period from the early nineteenth century to 1930 was dominated by traditional or indigenous tenure. During the period 1930 to 1960 there were many upheavals as world wars, depression and colonial officials interfered with the indigenous tenure systems in most African countries (Basset and Crummey 1993; Toulmin and Quan 2000). During the period 1980-2000, indigenous tenure was viewed as a problem which hindered productive investment in agriculture, hence a need for reform; this was the time of implementing structural reform programmes. On the basis of these phases it could be argued that a new phase has begun after the year 2000, as there is wide acknowledgement of customary and other informal forms of tenure though, some scholars still prioritise titling as being most conducive to development.

Current debates on land tenure seem to be centred mainly on two schools of thought. The first places emphasis on the fact that indigenous tenure forms do not encourage investment, therefore there is need for land reform programmes aimed at encouraging titling (Hardin 1968; Payne 1984; Rakodi 1988; Desoto 1989; Veenhuizen 2006). Supporters of this position criticise the traditional tenure system for lacking the element of exclusion, which serves as a disincentive to the user as benefit does not accrue to him or her only but yields more social benefits. De Soto's prominent work on formalisation of informal settlements served as a basis for most land titling programmes as he put emphasis on enabling markets to work (De Soto 1989). Falloux (1987) argues for instance that the traditional tenure system worked well when there was plenty of land, but the 'scramble' for land triggered mainly by the rapid population growth, rendered it unsuitable. Proponents of reform also argued that redistribution of land is of critical

importance in sub-Saharan Africa as most of these countries have the dualistic land tenure system. Supporters of tenure reform also point out that reform becomes crucial as people migrate longer term to informal settlements. In relation to urban contexts: Olima and Obala (1999: 119) demonstrate that 'development on land depends on who owns the land', and that customary land tenure is ill-adapted to urban conditions as there are a lot of uncertainties regarding ownership which culminate in conflict and adversely impacts on the implementation of urban development projects. Platteau (1992) reinforces this view by stating that this type of tenure is frequently abused. Critiques of this reform approach argue that freehold tenure systems or titling is not the best form of tenure as it is unaffordable to most of the urban poor thus bringing the unintended effect of marginalising them. Under the reform agenda, poor people may sell it and be left completely destitute (Payne 2002) which is a process that is more likely to result in gentrification. Payne (2002) further refutes the link between property ownership and economic development on the ground that certain countries such as Germany, Switzerland, Sweden, and Zurich have lower proportion of home owners but are still very developed when other countries like Bulgaria and Indonesia have high proportions of private land ownership but are not considered developed.

The second school of thought points out that land reform is very costly and unnecessary because the existing traditional systems of land tenure are flexible (Hunter and Mabbs-Zeno 1985; Mabogunje 1992; Toulman and Quan 2000; Durand-Lasserve and Royston 2002; Van Asperen 2007). Instead, they argue that there is need for research to ascertain, for instance, how people in the southern Africa region muddle through the informality of the customary tenure systems especially in the urban areas and peri-urban areas (Toulmin and Quan 2000) to avoid being constrained by the customary system in adjusting to economic changes. They also point out that customary tenure itself does have security of tenure to a certain extent, but that it is decreasing due to urbanisation.

In this study I take cognisance of the fact that there is always a faction of society benefiting from the traditional land tenure system which therefore resists change. This situation is portrayed well by the land tenure system in Swaziland, in that under customary tenure, traditional leaders allocate and administer the land. They continue to allocate land even when the areas have been declared urban as is the case in most informal settlements. Such a system culminated in the implementation of the Swaziland Urban Development Project (SUDP – discussed in more detail below) a decade later than its initial planned commencement date. This was because the traditional leaders did not accept it and viewed it as interfering with their power base because of it was based on 99-year lease (World Bank 2005; Lowsby and De Groot 2007; Ministry of Housing and Urban Development 2008).

Some authors argue that since there are neo-customary practices (mixture of customary, formal and informal tenure systems) engaging in land reform exercises may not always be necessary (Toulmin and Quan 2000; Durand-Lasserve and Royston 2002; Hamdi and Handal 2005). Durand-Lasserve argues that neo-customary practices usually work through an individual who acts as a liaison between municipal authorities and the people operating on trust they provide fast and cheap access to land by the urban poor. Gough and Yankson (2000) use a case study of Ghana to show the co-existence of different modes of land supply and the advantages and disadvantages of both customary access to land and titling.

1.5 Legal pluralism

Legal pluralism concerns the intersection of European and indigenous laws in colonial and post colonial societies (Moore 1999; Wilson 2000). This concept is not only confined to Africa but other continents such as Asia. For instance, in India the religious laws based on Moslem and Hindu co-exist with the western legal system (Tamanaha 2000). Law is pluralistic in nature in all societies and efforts to draw a divide between the different kinds of legal pluralism are not possible. Most customary practices in postcolonial states are influenced by Western laws even if it is in a subtle manner (Fuller 1994; Tamanaha 2000). Noteworthy is that customary land tenure is based on uncodified law and local norms and practices. In Africa, these are managed by chiefs and traditional leaders and there is often no sharp distinction between customary land tenure and statutory land tenure (Cotula et al 2004). The problem is that despite recognition of customary land rights, state-led land reform in Africa, Asia and Latin America, is conceived by national governments in a top down fashion and implemented through bureaucratic modalities and with strategies which do not accommodate varying meanings of land, plural notions of property and diverse political economic contexts (Sikor and Muller 2009). Paradoxically, policy-makers claim to be implementing programmes to benefit the disadvantage groups. Yet, improving security of tenure needs to be tailored to local contexts and to the needs of a particular tenure regime and even city or country (UN-HABITAT 2006). This study focusing on Swaziland will demonstrate the problems encountered as a result of legal pluralism and its repercussions for local residents.

Swaziland's legal system is also dualistic in nature; the Swazi customary legal system co-exists with the Roman Dutch Common law which is based on a western legal system that can be traced back to the colonial era (Matsebula 1976; Rose 1992; Levin 1997). The Swazi customary legal system is still largely rigid though it was, and still is, influenced by the modern legal system. For instance, the promulgation of the Native Courts Proclamation No. 80 of 1950 which guides operations of Swazi courts

has influenced certain customary elements (Rose 1992) as it detects cases that can be tried within the customary legal structure and those that have to be referred to the modern legal system. This is contrary to other countries with customary tenure systems in Southern Africa such as Botswana and Lesotho which have already modified their customary land tenure systems (Mabogunje 1992). Swaziland has insisted on not tempering with the customary land laws. Customary land law is predominantly under the jurisdiction of chiefs and their inner council (libandla) regulated by the Native Administration Act No.79 of 1950 and not by Swazi courts. The chiefs can appeal to the King directly if there is a land dispute that cannot be settled (Matsebula 1972). The modern legal system that hears land disputes is comprised of District commissioners, Ndabazabantu, Tinkhundla and Swazi Nation Court (Rose 1992). The concept of legal pluralism is important in this study as it examines the distribution and management of the urban land tenure systems in Swaziland and its impact on residents of informal settlements.

1.6 The proliferation of informal settlements

The term slum refers to unplanned settlements, which normally are a neglected part of a city. Hindson and McCarthy (1994: 1) view informal settlements as ‘dense settlements comprising communities housed in self constructed shelter under conditions of informal or traditional land tenure’. Although evidence shows that informal settlements are found not only on traditional land tenure, the issue of customary tenure systems and land tenure seems to be at the centre of most informal settlement-related challenges and conflicts in sub-Saharan Africa. UN-HABITAT defines an informal settlement or slum as an area characterised by inadequate access to safe water, sanitation, and infrastructure, poor structural quality housing, overcrowding and lack of security of tenure (UN-HABITAT 2006; Rilley et al 2007). This study will use the UN-HABITAT definition, though cognisant of the fact that it has also been criticised. The justification for using the definition is that it captures the main characteristics of informal settlements in most countries in sub-Saharan Africa, including Swaziland.

Studies show that the history of informal settlements in developing countries varies from country to country and within countries as political conditions and leadership change. A good example is that the evolution of settlements in Kenya took place in distinct phases under the impact of three differing historical political forces (Mbithi and Barnes 1975). In Mexico, Payne (1984: 150) reports that ‘unauthorized settlements are usually premeditated and planned by agents with clear interests in sponsoring such developments’. In contrast, in India, slums often exist in marginalised areas such as

along natural drains and railway lines. For instance, in Dehradun, informal settlements developed along two rivers (Jain et al 2005).

Empirical evidence has shown that informal settlements are not homogeneous because the inhabitants normally have different socio-economic status (Hindson and McCarthy 1994). Davis (2006: 25) argues for example that ‘not all urban poor, to be sure, live in slums, nor are all slum dwellers poor’. Developing countries like Swaziland find themselves under pressure to deal with the challenges of informal settlements because of their impacts on the overall urban development process. Dealing with the environmental and health challenges presented by the lack of clean water and proper sanitation and the overcrowding (United Nations 2006) is difficult given that urban authorities in developing countries have a narrow revenue base (Rondinelli and Cheema 1988; Gilbert and Gugler 1992). The evolution of this settlement typology can be attributed to the history of cities in developing countries, which is embedded in the colonial era (McAuslan 2003; Todaro 2006; Williams et al 2009). The challenges with regard to provision of housing and services for the urban population, especially the urban poor, have been attributed to industrialisation and structural adjustment programmes implemented by some developing countries (Todaro 2006). In addition, Lipton (1977) blames developing countries for perpetuating urban bias by investing in viable urban projects at the expense of rural agriculture, which in turn has negative externalities on the poor.

However, Devas and Rakodi (1993) dismiss the above claims on the grounds that in spite of the lack of job opportunities in cities, migration is rife because people want to earn higher incomes. These debates are very relevant to the issue of informal settlements because the influx of people into urban areas spill into many other areas of life. Most prominent is the lack of housing for the urban poor which is a challenge for most developing countries and their municipalities. Understanding some of the processes that hinder urban development should help governments formulate better strategies of addressing it. The foregoing statement further reinforces the case for the significance of this current study which seeks to show how the multiple tenure systems in Swaziland affect the rights of informal settlements residents.

An issue that often underlies the challenge of informal settlements is land tenure. One argument presented above is that lack of security of tenure keeps the urban poor in a vicious cycle of poverty adversely affecting the residents of informal settlements. It is on the basis of these and other negative repercussions that supporters of informal settlements place more emphasis on the need to put in place policies that will address the issue of land tenure and informal settlements. It is however not clear from the literature that formal land titling will resolve these issues for the poor.

1.7 Conceptual framework

This study is concerned with examining how land is distributed in the formal settlements under urban development projects, thus it is inevitably concerned with the interaction of the traditional and urban authorities. The involvement of the traditional and urban authorities in land distribution in urban areas of Swaziland and the contestations witnessed under urban development projects is evidence of the political nature of land as these authorities strive for control. The central theme that runs through this thesis is land control (as evidenced through the interplay of land tenure systems) and urban development, with regard to the SUDP. The latter, specifically, involved privatisation of tenure which includes allocation and registration of plots and installation of infrastructure. The involvement of actors, contexts and dynamics over land control (Peluso and Lund 2011) necessitates the use of the ‘political frame’ in this study. The political frame suggests that organisations are grounds for power struggle and for contesting limited resources (Senge 1990). Similarly, as Gilbert and Gugler (1992) note, specific forms of illegal occupation of land are determined primarily by the political context.

Cities’ futures are largely shaped by those individuals and institutions involved in formulation, planning and implementation of projects, hence, projects are political arenas (Brenner and Theodore, undated). The political frame suggests that organisations act as ‘coalitions of diverse individuals and interest groups’ (Bolman and Deal 2003: 186). This means that government decisions are not made based on its’ own access to scarce resources, but often economic and political vested interests shape these decisions. Implicit in these propositions is that conflicts arise mainly as a result of diverse interest and scarce resources. Lund (2000) therefore argues that since rights are negotiated, conflicts are inevitable; hence, the need to pay attention to ways of institutionalising negotiations and managing disputes. The political frame is useful in examining how urban land policies, regulations and development programmes are made. It is also helpful in addressing the question of whether or not policies and programmes are benefiting the intended target group or serving other interests. In this context, this study will examine the extent to which powerful actors, such as the World Bank, have influenced urban land policies and the nature of upgrading projects from the perspectives of diverse stakeholders contesting for urban land. In examining the above issues, the most prevalent conceptual approach applied to informal settlements have been that of urban planning and geography, examining, for example, low-income housing and urban services, and focusing on describing and evaluating different approaches employed by the developing countries to improve settlements (McAuslin 1992; Devas and Rakodi 1993; Stren 1993; Werna 1995; Davis 1996). Even the scant literature on Swaziland’s urban development (Forster and Nsibande 2000; Miles-Mafafo 2001; Sihlongonyane 2003; Muzvidziwa and Zamberia 2006) follows the same trend as it

is based on geographical and planning perspectives. Although this theoretical framework is useful in understanding efforts made by the developing countries to address the challenge of housing and land tenure, it lacks the depth to demonstrate the processes and the interaction of the actors involved in urban development and fails to produce adequate information which might enhance development planning. This study diverts from the conventional urban planning and geographical approaches by using a multi disciplinary development perspective – it is concerned with the processes of development planning and the interaction of actors involved with the intent to show how these affect the residents of informal settlements and upgrading projects. It therefore hopes to make a unique contribution in literature on urban development in Swaziland.

Since this study maps the dynamic processes and relationships involved in urban land administration with the view of illuminating its impact on residents of informal settlements, it implicitly draws from the theory of access. The theory of access is concerned with ‘who actually benefits from things and through what processes they are able to do so’ (Ribot and Peluso 2003: 154). This theory is important for this study which examines not only claims made by the traditional and urban authorities over the informal settlements but also, the benefits of the SUDP that actually accrued to residents as opposed to those anticipated based on the development planners’ assumptions.

The study also uses the actor-oriented approach which recognises the complex nature of interactions occurring between actors involved in projects at both field and international level and allows us to focus on issues of poverty. The approach recognises the complex nature of interactions occurring between actors involved in projects at both field and international level and that development is a learning process, therefore recognition of local actors plays a vital role in initiating new programmes to foster economic development (Helmising 2003). Bryant (1998) states that despite the fact that the micro-level communities at city level have the highest urban population, they have often been neglected and local actors considered as followers led by the macro-level decisions, yet in most cases that is not the case.

The actor-orientated approach is based on local interests, how they are organised and dynamics linking the interests through power and influence (Rossi 2005) which can be revealed by actions, decisions and projects and also through interviews with community leaders and small focus groups with residents. The approach is useful in investigating actors ‘pursuing their interests through their actions within the broader economic, social and political context’ (Bryant 1998: 6). It places emphasis on including local communities in all stages of development and using existing strengths in order to have development that benefits the whole community.

In this study, the use of both the political frame as a conceptual frame and the actor-oriented approach is meant to ensure a balance of the analysis of the subjects under review because individuals and institutions are not only influenced by the formal political structures but also informal practices. This study therefore will provide in-depth analysis of the interactions involved in the SUDP, in introducing a new tenure system in Swaziland and overlooking legitimacy of the traditional authorities. It will also go beyond the current literature on urban planning and development by illustrating how the residents of the informal settlements muddle through, by engaging with the two different authorities.

1.8 Research strategy

The qualitative-quantitative research methods debates have seen a shift to a focus on relative advantages and uses of the two types of research methods (Hammersley 2000), which is contrary to the debates that dominated the nineteenth century, based on supremacy of either of them. The bias against qualitative studies still does exist; but there is a realisation that qualitative and quantitative research methods can be integrated to complement each other and as such, are not completely isolated from each other (Flick 2006; Silverman 2006; Berg 2007). This suggests that a researcher who is doing qualitative research can use quantitative methods to minimise the problem of generability, likewise a quantitative researcher can embrace qualitative research methods to improve interpretation of relationship between variables (Bryman 2008). Qualitative research is concerned with ‘meanings, concepts, definitions, characteristics, metaphors, symbols and descriptions of things’ (Berg 2007: 3). It generates results and theories that can be understood by the people studied and others and is able to capture life’s realities; thus more suited to micro-level research. As result of this, the qualitative research strategy that uses an inductive approach to a relationship between theory and research, paying more attention to the interpretation of the social world by individuals. It uses words rather than numbers (Maxwell 2005).

Qualitative research also helps reveal complexity (Miles and Huberman 1994; Saele 2004), as it provides detailed information about people and cases (Patton 1990). Bryman (2008) observes that quantitative research strategies entail a deductive approach, positivism and viewing social reality as an external, objective reality. A researcher using this methodology assigns numbers to qualitative data (Jacobs 1979). This means that a quantitative researcher has to carefully construct measuring instruments and administer it well to obtain appropriate data. However, quantitative researchers’ reliance on

instruments and procedure is unable to relate research to everyday life (Hammersley and Atkinson 1983; Denzin and Lincoln 1998).

To emphasise the relationship between the qualitative and quantitative methods explained in the above paragraph, Miles and Huberman (1994) assert that quantitative and qualitative methods are intertwined. A researcher using a qualitative method, often, will use numbers such as a population census or household survey to enhance empirical evidence. Likewise, numbers alone do not convey much meaning, therefore, words and experiences become necessary. This study used a mixture of qualitative and quantitative methodology, with qualitative methodology accounting for a main data collection and quantitative method only accounting for a very small part. The household surveys (questionnaires) which I conducted in the research areas contained both open and closed ended questions thus enabling me to use both quantitative and qualitative methodologies in analysing the data. I also used the numerical data to compare with data collected from the focus groups and semi structured interviews.

The justification for the use of mainly qualitative research methodology is that the study examines non-quantifiable variables such as interaction dynamics, perceptions, assumptions and effects. In particular, I wanted to know how the SUDP affected residents of the informal sector, especially those less powerful or marginal to political processes. Such information would mostly be available through in-depth, multi-method qualitative research including case studies, life stories, interviews, observation and introspection (Denzin and Lincoln 1998). The multi-method nature of qualitative research ensures triangulation; thus enhances an in-depth understanding of the phenomena as it adds breadth and depth to the investigation (Patton 1990; Flick 2006). This study used a variety of methods which include participant observation, in-depth interviews, key informants, a household survey, focus groups, semi structured interviews and a transect walk.

Unlike in quantitative research where validity depends on well-constructed instruments that will be used in measuring the phenomena, in qualitative inquiry, the skill and competence of the researcher is a determinant of the quality of the research (Patton 1990). The more than ten years experience I have in working as a development practitioner, being involved in communication with different stakeholders and sometimes conducting social surveys in different communities in rural and urban settlements added to improving the quality of this work. I had specific insights into dealing with the community and knew how to ask questions in a way that would facilitate free communication. My qualitative research was also constructed around intellectual ‘puzzles’ or problems connected to the epistemological and ontological positions embraced in the research. Mason (2002) presents four common puzzles:

- Developmental puzzles ask how and why did x or y develop.
- Mechanical puzzles are concerned about how something works.
- Comparative puzzles: What can be learnt from comparing x and y?
- Casual or predictive puzzles seek to understand what influence x has on y and it might extend into a predictive puzzle.

This study engages mainly the mechanical and casual predictive types as its focus is on how the land tenure systems work and how they affect residents of informal settlements upgrading projects. The puzzle that this particular study seeks to investigate is:

To what extent and in what ways, does the interplay of different tenure systems in Swaziland affect the socio-economic development of residents and the upgrading of informal settlements in Swaziland?

Sub-questions

1. What are the urban land policies, processes and institutions that guide and influence the pattern of urban expansion and the development of unplanned predominantly poor, settlements of Swaziland?
2. What are the effects on the residents of the interaction of different authorities involved in informal settlements upgrading projects?
3. How do informal settlements residents respond to the complex interplay of the different authorities and informal settlements upgrading projects?

Qualitative research is conducted through field work which has to do with studying people in their natural settings and involves a researcher venturing into a world of others, to learn how they interact (Nachmias and Nachmias 1992). During the first stage of my research design, I decided to use a case study approach, focusing on the case of the Swaziland Urban Development Project (SUDP). A research design is seen as a framework for the generation of evidence that is suited both to certain criteria and to the research question in which the investigator is interested (Bryman 2004). It helps to address the research questions in an explicit manner (de Vaus 2001). Case studies can be used in both qualitative and quantitative studies. A well designed case study is one that has holistic meaning, examining all elements of the unit of analysis, rather than selected ones, thus taking into account the information acquired in different levels (de Vaus 2001). A case is an empirical inquiry that examines a phenomenon in detail with the use of various data gathering methods (Yin 2003). Case studies should not be viewed as an exploratory stage of other research strategies; instead, it is a research strategy with advantages. Case

studies enable a researcher to collect in-depth and detailed information, thus, capturing various nuances and elements that other methods might overlook (Berg 2007). Cases can be used to either build or test theory. Yin (2003) proposes the development of theory before collection of case study data for the reasons (amongst other reasons) that theory could serve as a guide to select an appropriate case, help in sifting elements of the cases to be explored and sometimes enable the researcher to make generalisations to other cases and this study embraced this approach. There have been some criticisms against the case study approach which include that they may promote bias, provide little basis for generalisation and result in too much data that cannot be read (Yin 1994). However, all these criticisms can be addressed by an investigator being more rigorous in data collection (Berg 1995; Yin 2003).

The criteria for evaluating quality of research are reliability, replicability and validity. Reliability means ‘the extent to which measuring instruments contains variable errors’ (Nachmias and Nachmias 1992). Reliability is meant to reduce bias, therefore a researcher needs to clearly set out procedures followed, for instance document research procedures. This could ensure the replication of the case by another researcher. In this study, I have attempted to document the steps pursued in data collection and analysis as indicated in this section on research methodology. The other criterion, which is validity, has to do with approximation to the truth (Seale 2004). To improve validity of this study, I took into cognisance the involvement of many actors such as residents, traditional leaders, aggrieved residents, regional administrators), government officials, urban local authorities (LA), World Bank officials, other service providers, financial institution etc and sought to get a full picture of the project by obtaining information from this wide range of participants. To achieve this, I used different methods (triangulation) to acquire information about various levels and elements involved in the SUDP. Triangulation is viewed as a means of not only refining but also strengthening conceptual linkages (Goetz and LeCompte 1984). It enhances an understanding of the research topic, through a mixture of several lines of insights also known as multiple operationalism (Berg 1985). The use of different methods in research helps to minimise the limitations of a case study in terms of reliability and validity.

The study uses a case study of the Swaziland Urban Development Project (SUDP) to explore the urban land tenure systems and their impact on residents of the informal settlements. Case studies are preferred when ‘how’ and ‘why’ questions are asked. In accordance with Yin’s (1994) proposition that investigators should carefully design and conduct the case to minimise its limitation as a research method, I opted to use different methods and prepared the research instrument before I went to the field to ensure quality and sufficient time to pretest certain instruments such as the household survey questionnaire. I constantly made an effort to present empirical evidence without prejudice, as this method is normally criticised for the lack of rigour (Yin 1994). Identification of a case that will address the research question

is vital (Flick et al 2004), and in this study I used the case of the Swaziland Urban Development Project for five reasons:

- The SUDP is a classic case in that it is the first and largest integrated urban development project that the Government of Swaziland ever embarked upon as an effort to address informal settlements challenges.
- The SUDP also involved an international organisation, namely, the World Bank, which co-funded the project with the Government of Swaziland, providing an amount of US\$29 million, with the latter giving US\$34M. The role of international organisations in the developing world especially with regard to the influence they make in policies attracts development scholars' attention; therefore I felt the SUDP presented an opportunity to examine such in the case of Swaziland.
- The SUDP is not only implemented in Swaziland, but also other developing countries such as Cameroon, Ghana, Kenya, Ethiopia and South Africa; it is also implemented in some countries of South Asia and Latin America. In an effort to promote sustainable cities, the World Bank partners with governments to implement long term integrated development projects. Underpinning these urban development projects is the adoption of an integrated systems approach which sees cities' challenges as interconnected to the core elements of the city system (such as land, housing, markets, city economies and policies (World Bank 2002). Although this study flagged up the elements of interplay of land tenure systems and its effects on residents of the informal settlements, which might be more unique to Swaziland, other elements of the SUDP are generalisable to other urban development projects.
- For this study, an accessible setting was necessary too because though funded, this is for a limited time of three years. Accessibility is what Silverman (2000) considers essential to researchers, in particular those who conduct unfunded research.
- My previous involvement in the project from 2002 as part of the Manzini City Council's team monitoring the SUDP in Moneni drew my attention to the SUDP, which later became a motivation for the pursuit of the study investigating issues of urban development and land tenure in Swaziland and this is discussed below under the subtopic 'reflections'.

Methods and questions

In order to address the **first sub-question**, which examined the different urban land policies, processes and institutions that guide and influence the pattern of urban expansion and development of unplanned and predominantly poor settlements, I reviewed legislation and policies guiding urban land

management and housing in the country and other related policies and guidelines. The objectives for this sub-question were:

1. To understand legislation and institutions that guide urban land management in Swaziland
2. To understand how the actors are expected to address issues of unplanned settlements and also the processes involved in formalising such settlement.

1.8.1 Secondary data

This study used secondary data for its methodological advantages, which include, enhancing credibility of the study and also serving as a basis with which to compare primary data (Nachmias and Nachmias 1992) thus improving validity of the study. To keep up with this, I collected data from archival records of MHUD, Manzini City Council, University of Swaziland's Swaziana Section and Swaziland National Archives in Lobamba. Reviewing of documents relevant to the study began during preparation of a research proposal at the Institute of Development Studies, since I brought with me a number of documents on the SUDP. I also accessed documents about the SUDP online. However, I carried out a more comprehensive review of the documents relating not only to the SUDP but also land tenure in Swaziland, during the fieldwork period, which ran from September 2009 to 1 June 2010. Reviewing the documents helped me appreciate the relevance of the legislation and policies to the interplay of the different authorities involved in managing urban land. It also increased my understanding on how the actors are expected to interact with one another. Reviewing documents also enhanced my understanding of the legal process of formalising settlements in Swaziland and the factors that led to the initiation of the SUDP and the subsequent funding of the project by the World Bank. I reviewed a broad spectrum of policies, guidelines, structure plans, development codes, progress reports, and memos prepared by the World Bank. Most of these documents were available at the Municipal Council of Manzini, my employer. Since I already had professional and personal relationships with some of the officials I was able to access even those documents, which are only available at the Ministry of Housing and Urban Development and other ministries. For one week, I was attached to the Ministry of Housing and Urban Development's office that keeps all the SUDP documents, which was then occupied by an economist who acted as a contact official for the SUDP after the disbandment of the Project Coordination Unit. This gave me an opportunity to get some documents that were not readily available at Manzini City Council. I reviewed legislation, policies, guidelines fact sheets and any other primary documents such as memos and minutes of different meetings held by the stakeholders involved in the SUDP and correspondence between

institutions. One document, which I could not get from the Ministry of Housing and Urban Development's office, which is crucial in this study, was a study by Hoek-Smit on Low Income Housing in Swaziland. However, after futile efforts I ultimately wrote to Hoek-Smit in the U.S who generously sent me an electronic version of the report (draft) and also a copy of the study on Changing Housing Markets in Swaziland. The importance of these documents is that it captures the conditions of informal settlements in the 1980's and housing conditions.

The **second sub-question** asked how different authorities' interaction affects the poor in informal settlements upgrading projects. This aspect of the study examined how the living standards of the residents of informal settlements were affected by the interaction of various authorities involved in upgrading projects. This question had four objectives, which are:

1. To understand how these authorities interact in practice.
2. To find out how notions of 'modern' and 'traditional' are used by the authorities and how informal communities respond to these.
3. To understand which areas or aspects of the lives of the residents of informal settlements are affected by the interrelationships between the different authorities
4. To learn how upgrading projects have been promoted or delayed by the interplay of different land tenure systems and how projects have in turn affected the poor.

The **final sub-question** explored how informal settlements residents responded to the complex interplay of the different authorities and to the informal settlement-upgrading project. Determining how the residents responded to or 'muddled through' helped in understanding the strategies the residents used to adapt to challenging conditions. It also enhances understanding of the effects of the tensions on their living standards.

The objectives of the sub question were:

1. To understand how residents responded to the traditional leadership's authority.
2. To understand how they responded to the municipality's development projects and the development standards.
3. To ascertain the strategies they used in dealing with the different authorities.
4. To find out their reasons for not accepting the SUDP, when first proposed and to ascertain factors that made the traditional leaders change their decisions pertaining to the project in 2007.

Sub-questions two and three were explored using different methods examined below.

1.8.2 Primary data

Participant observation

During fieldwork, I participated in a two plot allocations committee meetings at the request of the Planning department, who requested my opinion on certain land issues. Participating during fieldwork turned out to be beneficial for this research in that it gave me an opportunity to closely assess the current status of project and project issues. For instance, it was at these meetings that I learnt that the issue of authority was a priority in the agenda, especially for the traditional leaders. The representatives of the Moneni Community in the Plot Allocations insisted that the issue of authority was still pending and Manzini City Council is not the authority of the area. The participant observer's status in this meeting also helped me to have some knowledge about the two new members of the Moneni Steering Committee whom I did not know.

Informal conversation

During fieldwork, there were times when I walked around in the project to converse with community members and get their feelings about the SUDP. During that period, for instance, I visited those homesteads where I saw a group of people whether drinking together or relaxing and sought permission to interact with them. These informal interactions proved to be useful in getting to know what the residents say about the project, especially in a relaxed set up. I often caught a bus to Moneni and on the bus would find someone to discuss the project issues with. During the informal interaction I got to know those residents who were happy and those not happy with the project. Under the category of the unhappy residents, were those who were aggrieved by the project to the extent that they formally lodged complaints with both City Council and traditional leaders. I conducted in-depth interviews with five of them (see Chapter Five and Six for detailed information on the cases).

In-depth interviews with aggrieved residents (Moneni informal settlement)

In-depth interviews are useful in research as they give more depth to the phenomena studied because interviewees are permitted to express their views about the subjects in their own frame (Henn et al 2006). In-depth interviews were held at the homes of the interviewees and there was less distraction as the appointments had been pre-arranged. I used in-depth interviews to probe and gain more insight from

at least five residents negatively affected by the SUDP and who were aggrieved, who had formally lodged complaints with their lawyers and the Municipality and City Council. Most of the complaints were on compensation issues. The Municipal Council of Manzini compiled a complaints form to be filled in by residents who had concerns and complaints about the project and many residents used the form. Less than ten residents remained dissatisfied as a result of either relocation or compensation issues, even after negotiations with the municipality followed the court route (either Swazi National Court or the High Court). Some of them complained about the traditional leadership depriving them of their compensation. In particular they focused on five cases - three pending in the High Court of Swaziland and two only reported to the City Council and the traditional leaders and Swazi Nation Court. These were dealt with in detail, interviewing as many of the different individuals involved as possible. However, this does not mean these were the only people in the area dissatisfied by the project, many more were, as illustrated by the focus groups and household surveys.

The opinion of the complainants greatly benefited the study in that they demonstrate the complexity of the interrelationships of the authorities involved in land management and the extent to which the residents believe they have been affected by the SUDP. I had access to the complaints forms and also the file where all legal correspondence is kept by the Manzini City Council, therefore I managed to see those cases already taken to court and then arranged interviews with the individuals involved. In addition, I already knew most of these cases as a result of my prior involvement in the project, thus, I managed to arrange appointments with them and without the help of the traditional leaders. Four of the five persons interviewed cooperated well but the one was less cooperative stating that the issue was still pending in court. Actually, cross checking the limited information he gave, with key informants from City Council, traditional leaders, personal information and minutes of plot allocations meetings, the findings reveal that he predominantly gave false information during our interview. For instance, he said that he invested the compensation for his affected structures into the same plot because he did not receive an alternative plot to relocate to. The data collected from the above mentioned sources show that he refused the plot allocated to him though initially he had accepted it.

Two of the interviews with aggrieved residents were recorded but case A was not as the interviewee did not permit. I also took notes during the interviews.

Case A: This is a case of a man who received compensation for his houses which had to make way for the construction of a road and primary school. He then refused to relocate to a new site. He approached both a lawyer and the highest body that advises the King on Swazi law and customs for assistance, known as Liqoqo Advisory Council. This is the man referred to in the above paragraph.

Case B: Is the case of a couple that had separated and fought over the compensation for vegetation and septic drainage. The compensation was paid out by the Ministry of Housing and Urban Development to the wife as per the recommendation of the traditional leaders of the area. The husband approached both a lawyer and the regional administrator (R.A) for intervention but all the efforts were in vain. Ultimately, he made an appeal to the Minister of Housing and Urban Development. Since he could not get a favourable response from these he then sought the intervention of the Swazi National Court.

Case C: Is a case of a single woman who got to *Khonta* (settle through arrangement with traditional leaders) in Moneni through the assistance of a male proxy who was her relative. During the implementation of the SUDP, this woman's two houses were demolished and compensation had to be paid out. However, the proxy's wife asserted through her lawyer that houses were built by her late husband and therefore she was the rightful recipient of the compensation. The single woman filed opposing papers in court and successfully got compensation paid out to her.

I summarised the responses and drew some conclusions that relate to the research questions, paying special attention to emerging themes and more prevalent statements in all the interviews. For this method, the study aim was to use them as small cases demonstrating the interrelationship between the different tenure systems and how residents are affected. The content of the interviews also served as a guide for subsequent interviews including semi structured interviews.

Semi structured interviews

Semi structured interviews were conducted with people who participated in the SUDP in line with Nachmias and Nachmias' (1996) assertion that respondents have to be those who have been involved in a particular experience. The interviewees were selected on the basis of individuals who had participated in the SUDP through activities such as representation on the Project Steering Committee, Plot Allocation Committee, or involvement in community meetings and workshops organised by MHUD, I also interviewed some residents aggrieved by the project (see Table 1.1 for more information). An interview guide was prepared and 40 key informants participated. Interviewees expressed themselves freely; I only prompted to get more clarification on issues, which is what Bryman (2004) encourages. There was flexibility in interviewing as the interviewees would also ask questions. Semi structured interviews allowed people to answer on their terms (May 1993), thus, enabling me to obtain in-depth data relevant to this research. In order to ensure that the interview sample was comprehensive, I mapped out all the formal

leadership positions relating to urban housing and to Moneni. Interviews were then conducted with these key actors at local, regional and national level (see Table 1.1 below). Most of these key informants had been involved in the formulation of policy and guidelines relating to land management and housing. They often held meetings with municipalities about issues of informal settlements including the SUDP and therefore had more insight into the issues. Interviews with traditional leaders helped in exploring what happens when the government tries to formalise a settlement, shedding light on the actual processes and dynamics that occur. Getting the views of the lawyers and the Attorney General's Office was necessary since they are involved in interpretation of the laws. There had been some cases where lawyers advised their clients who were in dispute with the traditional leaders of Moneni to re-enter into negotiations with the traditional leaders. This suggests there is some discrepancy and ambiguity in the laws and their application. A couple of lawyers I approached in the Manzini Magistrate's office said that issues of land tenure are handled by the High Court and thus referred me to the Attorney General's office. Table 1.1 below entails a comprehensive list of the key informants interviewed, their positions in society or organisation and also the role they played in SUDP which served as a justification for interviewing them.

Table 1.1: Key informants and justifications

Category	Position of informants	Reason
Royal Residence	Acting Governor of Ludzidzini	In charge of royal villages, assists in the traditional government of the country and advises <i>INgwenyama (King)</i> or <i>INdlovukazi (Queen mother)</i> in various other respects (Swaziland Constitution 2005; Section 235)
Traditional Leadership	Princes of Moneni (2) Moneni Steering Committee (2) Central Committee Members in Msunduzu (2)	Distributed land prior to SUDP and involved in SUDP project issues Involved in plot allocation process
Swazi Nation Court	President of the Swaziland National Court, Clerk of the Swazi National Court	An office under the Deputy Prime Minister - adjudicate on customary issues. They adjudicated in two SUDP cases lodged by residents.
MHUD Ministry of Natural Resources and Energy MHUD Ministry of Economic Planning and Development Ministry of Justice and Constitutional Affairs	Land officer Property Valuer Secretary to the Land Management Board Former Director of the Project Coordination Unit, former Deputy Project Coordinator Economist Deeds Registrar Surveyor General	Deals with land issues. Evaluates properties Newly established board to oversee land in Swaziland, established by Swaziland constitution. Monitoring the Swaziland Urban Development Project Involved in SUDP planning issues. Registration of plots Approvals of physical layout plans

	Attorney General's officers	Involved in High Court issues related to land e.g SUDP cases lodged by residents (cases A, B and C).
Regional Administration⁵	Manzini Regional Secretary Mbabane Regional Administrator Indvuna YeNkhundla ⁶ (Manzini South)	Administration of the Region and participated in SUDP meetings. Served as a cabinet minister for many years and has in-depth information about the old informal settlements like Moneni ⁷ and Msunduza. As a Hhohho regional administrator he also dealt with issues of Msunduza. An administrative centre under which Moneni falls.
City Councils	Two Physical Planners, one Municipal Engineer, One Building Inspector, Municipal Council's Legal Advisor Councillor of Moneni Council of Msunduza	Control development in the city through effecting planning and development standards. They were involved in the SUDP planning and implementation. City Council policy-makers (Council) involved in the SUDP in that Council Management give monthly project report to them about the SUDP and make their contributions on the project.

⁵ Swaziland is divided into four regions, namely Manzini, Hhohho, Lubombo and Shiselweni.

⁶ Tinkhundla serve as regional councils for neighbouring chiefdoms. The country is divided into 55 tinkhundlas. Each tinkhundla is under the charge of an appointed commoner indvuna (National Physical Development Plan 1995) known as *Indvuna YeNkhundla*.

⁷ He is a head man of ELwandle which is a neighbouring area of Moneni, thus, has been involved in the issue of authority over Moneni. For instance he asserted that Moneni has no chief but is under ELwandle community's chief Mkhathshwa.

Swaziland National Housing Board (Developer)	Sales Manager and Sales officer	The SNHB acted as a development agency for SUDP implemented in Msunduza informal settlements and Moneni, but in 2002 at the instruction of the MHUD the Moneni project was handed over to the Manzini City Council to reduce the SNHB workload. This was the time when the community still resisted the project.
Community association	Two members of Moneni Development Initiative (MDI) steering committee (Chairman and Secretary)	The association was formed to address issues of land tenure and the SUDP in the informal settlement of Moneni.
Community Project facilitation	Two project outreach facilitators in Moneni and two project outreach facilitators in Msunduza.	Disseminated information about project to residents and liaise with the SUDP team.

Household survey

In this study a household survey was conducted in Moneni and Msunduza settlements to gather the people's views about the impact of the interplay of multiple tenure systems. Since the area has been surveyed, I used a general map of the informal settlements to divide the homesteads into blocks of five and randomly sampled ten homesteads from each block. However, in the case of Msunduza I found that the area had been sub divided into five sub communities for administrative purposes, therefore I drew ten households from each of these. I randomly sampled 50 households, with heads of households either resident in the area or not (absentee landlords), and this represents 20 per cent of the total number of households. The purpose was to try and get the views of the residents who had different experiences. In the case where the head of household was absent, I interviewed the person who represented the head of household in decision-making, which in most cases was either a son or guardian who had been there for many years and not a person who was just visiting. The homesteads randomly sampled were a mix of female and male headed households, working and non-working class and young adults and senior citizens - this brought about different experiences in the project. In the case of Msunduza, the sub communities of the area had uneven development, for instance, some were serviced with a sewer line whilst others had to construct their own septic tanks.

For analysing the household survey data, I prepared a spread sheet to compare the responses to the different questions. I created a code for each question and recorded the responses to find the frequencies of similar responses to each question. Most of the questions were multiple choice questions; thus, it was easy to find frequencies of similar responses to questions. For instance there were five answers to question 13 'who do you consider the rightful authority of the area'? These were i) chief/ traditional leaders ii) city council iii) government iv) regional administrator v) other. The responses of Moneni Community show that 90 per cent of the participants considered the senior prince to be the authority. For all the questions I used this same approach of data analysis and drew conclusions. Furthermore, I studied the qualitative, open-ended interview data to find the most common metaphors, and other statements made by the participants to express their dissatisfaction with the project such as 'confusion' and 'no development' (which I discuss in depth in Chapter Five). These metaphors, in turn, were drawn upon in developing the core arguments and writing the chapters which follow. I quoted some of the statements made by the participants to enhance the analysis and Chapters Four, Five and Six of the thesis make use of these statements. For instance, in Chapter Six, women's views on how the project had affected them helped me to demonstrate the impact of the project on women and female-headed households discussed in-depth in Chapter Six.

Transect walk

The main advantage of a participatory approach is that a researcher is able to carry out the research with the community members, making use of local knowledge (Cornwell and Jewkes 1995; Tandon 2005). Since proper planning should also take into consideration the ways in which different categories of people's needs and difficulties may vary (Rakodi 2001; Rifkin et al 2001), using this method to collect data is essential. A transect walk was undertaken with nine participants, who had previously participated in the focus group discussions. The aim was to identify where traditional leaders and influential clans are located, and sites where activities and community meetings – especially those relating to land matters - are normally held. The exercise helped to expand upon and contextualise data that had been collected using household survey and in-depth interviews with the aggrieved persons (see the dispute cases) and to provide different perspectives on the upgrading of the area. This method proved to be very useful as residents showed me some of the components of the infrastructure implemented under the SUDP and other problems which they were unhappy about such as poor drainage. These included high embankments making it impossible to access their homes, houses incomplete as a result of the building ban; fields taken away for infrastructure; cracks in some houses, the closeness of roads to their homestead, and the disparity between the infrastructure implemented in the general Moneni area and that on the sites where the princes live. The participants were more open and some of the issues raised had not

been covered by any of the other methods used. I could even see their non verbal actions, expressions of anger as they explained some of what they considered anomalies that had greatly affected them, and which led them to insist that there was ‘no development in the area’.

During the transect walk I took pictures of the project components that the participants showed me such as houses left incomplete due to the building ban of 1992 (see Appendix 8). My assistant and I recorded the discussions. To analyse the data, I went through the contents of the discussions and coded them. I proceeded to compare the results with the data collected from focus group discussions. I noted that although most of the data was basically a confirmation of data collected in focus group, new themes emerged. An illustration of the new theme was that the Princes living on Kingfisher Road (a strip of Moneni closer to a planned township and mainly occupied by families with royal relations) were given preferential treatment such as wide roads with humps and their plots were not subdivided. I therefore analysed the data, relating it to theory and to the sub questions. Most of the data collected using this method portrays how residents believe they have been adversely impacted by not only the SUDP but also the interplay of the traditional and urban local authorities. This was despite my efforts to ask them to show me components of the project that had positively affected them. In response to this question most of the participants quickly responded that there was ‘No development in the area’ which is a common phrase used by most of the residents who participated in the study both in Moneni and Msunduza informal settlements.

To analyse the data collected during the transect walk, I reviewed the notes taken by the research assistant and myself and drew out themes emerging from the notes. I compared these findings with the data collected from focus group discussions and noted new emerging themes. I paid more attention to the emerging themes and coded them separately. For instance, one new insight stemming from the data collected using this method was the fact that participants considered the category of senior princes and princesses, who occupy a strip of land along Kingfisher road, to be influential and to be shaping the development of the area, because of their political and economic privileges. Participants stated that this category of people had been privileged by the project by putting proper infrastructure components on this area. Illustratively, they described the road passing through this part of Moneni as not only wide, but also with proper drainage and speed humps compared to the roads provided to the rest of the community’s residential area (see Chapter Five for a discussion on this).

Focus groups

Focus group interviews, which involved interviews with small groups, were held in the Moneni and Msunduza informal settlements. My assistant moderator was a social worker who had vast experience

in dealing with people as a social worker; thus, she provided valuable help in ensuring that I got quality data. I briefed her on the purpose of the research and took her through the guiding questions to familiarise her with them. I explained to her how we needed only to facilitate and not obstruct deliberations. The focus group discussions were held with women and men separately in groups of ten and eleven. In Moneni I conducted two focus group discussions, namely one with men and one with women. The idea was to get the perceptions of these two groups as there is a general assertion that men and women are differently impacted by development projects, in particular those that involve a change of land tenure system in patriarchal societies (Mackenzie 1990; Goheen 1996; Deere and Leon 1997; Lastarria-Cornhiel 1997; Moyo 2005). To get balanced views of the young and old generation, in each group I had a mix of adults in their twenties, thirties, then middle aged, and senior citizens. This provided the study with different experiences. For instance in the Moneni men's focus group on land issues, there was a brief clash between the elderly and some of the young males because the former made a statement that Moneni had always been a good place but this has changed as a result of the youngsters⁸ who are disrespectful of the authorities (traditional leaders). This statement saw the group divide into two and I had to use my experience in dealing with communities to mediate to get the discussion continuing. Discussing land issues in a group, given the implementation of the SUDP which had already created uncertainty and division in the community by introducing the 99-year lease (discussed in Chapter Four and Five), could not avoid provoking conflict amongst participants who had been impacted in various ways. In addition, I thought tensions were between men and women and had not realised the diversity of tensions along lines of age until the focus group. The discomfort caused by the above-mentioned argument over Moneni as a 'good' place, which lasted for about ten minutes, was instructive because, despite the tensions, it revealed the diversity of experience and differing perspectives on land held by men of different ages. It was precisely these different views and tensions which were often revealed during the focus groups, which were important for this study because it helped demonstrate the diverse effects of the SUDP project.

Focus groups are sometimes difficult to manage (Matt et al 2006). Although I sought to minimise tensions and conflict wherever possible, it arose in sometimes unexpected areas. When this happened during the focus group discussions, I had to mediate where tensions arose especially when participants expressed conflicting views for a long time. Since I was pretty aware of such eventualities at the

⁸ Two of these young people were members of the Moneni Development Initiative (MDI), an association formed in 2008 mainly by the young people in Moneni which challenged the traditional leaders style of leadership especially with regard to land/plot allocation. See Chapter Five for more information about the MDI.

beginning of the group discussions, I allowed the group to state ground rules which included respecting other people's opinion. My experience as a former Development Practitioner in chairing meetings and sometime mediating in land disputes between different factions of communities tended to be very useful in managing the focus group; I was not overwhelmed by any of the emotions. The experience of the assistant moderator also proved to be useful as it provided me with enough time for taking notes. However, I had engaged a scribe to ensure that the assistant facilitator and myself could focus more on the deliberations rather than taking notes. The group participants would also correct each other or assist each other in bringing to memory some events. This supports Flick's (2006) comment that in a group there can be a validation of statements and views. There was freedom of expression within groups except that one woman in the women's focus group discussion in Moneni kept quiet for some time and then I had to try and involve her in the discussion through asking her views on the subject. It was then that she said that she was not happy because she did not know where she would relocate to as Manzini City Council had told them a truck would soon be availed to ferry them (those who could not afford the plot price) away from Moneni. After that she started participating freely though which is something that demonstrated to me the emotional effects emanating from the introduction of the 99-year lease to residents with low incomes who cannot afford it.

Some blank charts and markers were distributed to the participants to help them explain a certain issue and this way more focus was attained and it seemed to be exciting to the participants as they demonstrated certain phenomena on paper such as land use in the area. They drew a map indicating land usage in the area. I also had a tape recorder; hence, in the evening and the next day I listened to the cassettes and managed to summarise the data. The tape recorded discussions helped me not to rely on information I had acquired during the time I worked for City Council but to capture precisely what the group said. I analysed the data on the charts prepared by the community and the notes the scribe and myself had taken. I then thought through the data linking it to sub questions, thus, engaging in conceptual coding. In the process I focused on emergent themes. For instance, from the categories I had formulated 'authority of the area' and 'impact of SUDP' and when I analysed the data I noted the interaction between the traditional and urban authorities, confusion in the area, heterogeneous classes in the area and the impact of the building ban of 1992.

1.8.3 Reflection on the entire data analysis

In this study, data analysis began during fieldwork. At the advice of my thesis supervisors, I combined data collection and analysis. At the end of every month, I summarised the findings and

analysed how they related to the research question. I prepared a comprehensive report which detailed the findings and how I thought they linked to the research topic especially the guiding sub questions. My first report to my thesis supervisors was rejected since it had no findings but only informed them I had already started collecting data; they wanted to know what the findings were which I admit astounded me because I thought fieldwork would be a period to myself, with less supervision. This compelled me to prepare a summary of the findings almost every evening after field work, tracking main issues that drew my attention during interviews and observation, a habit I developed and persistently upheld throughout the field work period. It was not an easy process in the beginning as I found it too demanding, however I later got used to it. This approach to data analysis helped me to 'cycle back and forth between thinking about existing data and generating strategies for collecting-data' (Miles and Huberman 1994: 50). At the end of the month therefore I would pull together the summaries of the findings I had prepared and compile the required report, in the process doing in-depth content analysis. Such an approach has made the final analysis stage less difficult because when I started writing the thesis, I already knew most of the emerging themes not to mention the small cases I already had prepared to strengthen my arguments and justify to the supervisors why I thought the cases were relevant to the study. The cases greatly benefited the study as they demonstrate the complexity of the interrelationships of the authorities involved in land management and the extent to which the living standards and other areas of the residents are affected by the interplay. The cases also exemplify the manner in which residents seek to draw on both customary tenure and formal legal systems when seeking to demonstrate their claims to land. Using this method furnished me with an understanding of the effect of the complex interplay (Johnson and Reynolds 2002) and helped me collect actor-oriented view points.

My focus, in analysing the data produced during fieldwork, sought to emphasise the interpretation of the data from a position of understanding. I studied all my data - collected using the different methods - several times, made notes, used a coding system to bring together the different kinds of information collected through different methods and sometimes put the information in a diagram to understand it better (see for example Figure 4.2). In presenting the data, and linking it to the arguments made in this dissertation, I sought to alter the language of the participants as little as possible because my intent was to capture the realities of the actors and residents without compromise. I reflected on the data, on the tracking of actors, processes, and institutions, as well as the resultant data on interaction patterns, tensions and perceptions and, drawing on available theory and literature, drew out the themes and subthemes expounded in the empirical chapters (Chapters Four, Five and Six).

1.8.4 Positionality

Regardless of Emile-Durkheim's assertion that social science must be value free and objective (Campbell 1981), implying that researchers needed to suppress their values, the feasibility of such is difficult as values affect different stages of the research such as in making a choice of research area, choice of method, research designing and analysis of data (Bryman 2008). As indicated above, my motivation to carry out this study stems from my previous involvement in dealing with planning of informal settlements in the city of Manzini which included the SUDP being implemented in Moneni. In investigating the issues therefore I had access to both an insider position, and, an outsider position. My insider perspective stemmed from my earlier work with the Manzini City Council. I was familiar with the Council's frustrations, with the history of the SUDP and its progress (or lack thereof), I had participated in meetings and, as a result, had unique access to people and documents within the formal bureaucracy. For residents of Moneni, I was sometimes seen as being part of the City Council (discussed in the following section) and sometimes viewed as an outsider. This categorisation depended on the extent to which residents knew or recognised me from my earlier involvement. I was also an outsider in the sense that my research, shaped as it was by a United Kingdom research organisation, namely, the Institute of Development Studies, led me to ask new questions which went beyond my earlier experiences in the City Council. I also associated more directly with Moneni residents to hear their views on the research issues. During my research, I sought to use this juxtapositioning of insider/outsider perspective to develop a holistic perspective.

The debate on the 'inside/outsider' doctrine insists that researchers declare their personal motivation for conducting research and state their positionality. The importance that was attached to value neutrality and objectivity in research in the early twentieth century has been overtaken by new developments in philosophy and the sociology of science (Mercer 2007). Robert Merton (1973: 217) points out that the social and political environment have a bearing on science, thus, it cannot be attitude and value free. Illustratively, he presents the case of the politicalising of science in Nazi Germany and Soviet Russia which prompted a focus on social contexts in which science thrives. LeCompte (1987) makes an important statement that research is replete with conscious and unconscious sources of bias and this could be as a result of conflict between social roles and deep seated values (Merton 1973).

Adherents of the outsider doctrine aspire to objectivity and as such associate an insider researcher with errors (Georg Simmel 1950 cited in Mercer 2007) on the grounds that only a stranger can investigate conditions without prejudice. In this study I made an effort to avoid prejudice. Actually, using the different methods helped a great deal in the process. Being an insider tended to be an advantage in that I

had enhanced rapport with particular participants and awareness of the issues, thus, obtained in-depth data and this contributed towards validity of the study. Contrary to Simel's assertion, social scientists such as Bakalaki (1997), Gokah (2005), Payne and Payne (2004) and Brymn (2008) are of the view that bias relates to a lack of objectivity but that does not mean that a researcher who explicitly states his personal bias is discredited. Bryman (2008) and Hammersley (2000) emphasise that social research is permeated by values, that is, it cannot be value neutral as it is part of the social world. Contrary to the defenders of value neutrality who insist that values should not influence research, most scholars (Hammersely 2000; Seale 2004; Silverman 2006) assert that values have implications to research as the principle of value neutrality becomes rhetoric. For instance, Silverman (2006) observes that research funders influence research, thus there is 'no neutral money'. What matters is that advocates of researcher partisanship make known their assumptions underlying the research so that control can be exercised over them in terms of ethical and political-criteria (Hammersely 2000).

The fact that I selected a topic and a research area that I am familiar with has put me in a position of being partly an insider and partly an outsider. I concur with the fact that as much as research is concerned with the pursuit of knowledge it should bear some relevance to practical values, such that policy-makers and other professionals can draw from it. There were benefits of being positioned as an insider and these include familiarity with the culture of the area which made it possible for me to start doing data collection within the first month of field work as the community knew me. Although they instructed me to follow the official procedure of requesting permission from the traditional leaders, that was arranged within a few weeks. The already-established rapport with the community proved to be useful as the residents were paranoid about any research activity conducted in the area. As an insider I also had the privilege of accessing municipal primary documents and prominent officials with ease. Yet, it would be incorrect to say that I was a complete insider in all the circumstances as 'the boundaries between the two (insider-outsider researchers) are permeable and highly unstable' (Mullings 1999: 338). As suggested above, being an insider in terms of my involvement as a Municipal official also made some members of the community consider me as an outsider and this is examined in more detail below.

1.8.5 Challenges and limitations

Fieldwork commenced in September 2009 and was completed by mid-2010. As discussed above, my professional and personal relationships with the Municipal Council of Manzini and Ministry of Housing and Urban Development enabled me to easily access most official SUDP documents I needed. I also received cooperation from key informants based in these institutions. However, this research was not

without challenges, contrary to the optimistic anticipation I nurtured. In adherence to the research ethics and also with the intent to distance my research from the Municipal Council of Manzini,⁹ I sought the permission of the traditional leaders of Moneni¹⁰ to do research in their area. I went through an intense interrogation¹¹ process conducted by the leaders, or Inner Council, at the senior Prince's home at Ekuphumuleni (an area outside Moneni), an arrangement itself that intimidated me. Admittedly, it came as a surprise to me because I had thought that my previous work would mean that I was known to the Chief and Inner Council and would serve as sufficient introduction. The Inner Council used the event to challenge my role as a researcher and to question my commitment to Swaziland and to the communities affected. In my response, I emphasised what I thought the contribution of the study would be and reiterated my intention not to tarnish the community's reputation. They granted me the permission.¹²

Studying the SUDP as someone who had an insider perspective also presented other identification challenges. I had interacted closely with this community for about five years, therefore some of the interviewees found it hard to separate my work as an independent researcher from that of my former role as Municipal official. As far as these people were concerned, my association with the municipal council made me an outsider. To address this challenge I carefully selected key informants and made sure I sampled across a large population. I also identified some actors who did not know me in order to acquire perspectives not shaped by my previous involvement. In some instances, such as the men's focus group, there was at first a tension as some men insisted that I was not a researcher but Manzini City Council's spy. The documents I had as proof of studying in Sussex University saved the situation. Having worked for the organisation for seven years, it was impossible to completely distance myself from it - this explains why participants of some of the other focus groups would utter statements such as 'we want you

⁹ This is an organisation I worked for before the pursuit of the Doctor of Philosophy Programme at the institute of Development Studies.

¹⁰ Moneni area is an informal settlement located on the remainder of the Farm 838, Manzini. It is located to the South of Manzini City, along Manzini-Siteki Road just off the road. It covers an area of about 43 hectares and is 4 km away from the city. There are 252 households with an average of 6.92 people per household and the total population is 1745 (MHUD 1993). The informal settlement has always been administered as Swazi Nation Land by Prince Mshoshi who allocated land to people.

¹¹ Are you not going to give false information about the area just like one documentalist who produced a very popular documentary entitled 'without the King' where our community is shown as so poor that we eat raw chicken intestines? What will the residents gain from the study? Will the residents have a copy of the study?

¹² However, just before the meeting came to a close, a discussion ensued amongst the members concerning whether I should be allocated a traditional leader that would accompany me whenever I did my interviews. The situation was saved by an old woman who opposed the idea, saying that people should be provided with an environment conducive to express their heartfelt thoughts without being intimidated by the presence of a leader. She argued the views expressed could also help the leadership to know what people want and hence to act accordingly in future.

to tell them (MzCC and Mhud) everything, we are actually sending you' (Focus group discussion 2009). This was despite the fact that I had explained that the study was not undertaken on behalf of Manzini City Council. Whereas, this could be considered a weakness of the study, it was instrumental in that it motivated some participants to express their resentment towards city council and reasons thereof, thus, enriching the findings of this study.

Another challenge was interviewing those specific people with whom I had previously been involved in their compensation and dispute issues, as some of them saw all Council officials as being insensitive to their needs or taking sides with their rivalries. To mitigate this, I sometimes engaged a research assistant to help me in the process of conducting the interviews especially with those individuals I anticipated encountering challenges. I also avoided using a Council vehicle during fieldwork which helped in distancing myself from the organisation and continually emphasised my independency to interviewees.¹³

In this study, I do acknowledge the limitation of the personal interviews especially with regard to avoiding bias or influencing the respondents' answers. Nachmias and Nachmias (1996) observe that even the interviewer's gender may influence the respondents' answers, which may be the case in this study, as I interviewed both males and females. This is more likely in the context of Swaziland which is dominated by patriarchal tendencies (as analysed in Chapter Six of this study). In spite of the fact that patriarchal tendencies thrive in Swaziland, I had the leverage to decide how much to conform to them and nobody pressured me, partially attributable to being viewed as an outsider. The only time I adhered to some aspects of patriarchal behaviour was when I wanted to improve my acceptance to the community and avoid obstacles to data collection. For instance, I addressed older people, especially men, by their last names as it is against the Swazi culture to use first names and this served as a sign of respect throughout the fieldwork period. I was, however, able to undertake any work in the community at any convenient time without anyone questioning my movements. Furthermore, I interviewed men, participated in male activities (such as meetings), and in this way contravened conventional gendered behavioural patterns for young single women. However, in one instance, the patriarchal nature of the community manifested itself. In the transect walk I conducted with four men and five women, it became apparent that some of the men

¹³ As they saw me either catching a bus or hiring a taxi, they would ask why I was not using a Council vehicle and I would explain my position. This strategy actually drove the point home.

were not comfortable with being seen by the community as being led by a female researcher; hence, one man wanted to abandon the exercise just at the beginning. This conclusion is based on the fact that I successfully had focus group discussions in a pre-school classroom (Care Point facility in Moneni) with most of the participants and they were enthusiastic and not feeling ashamed. Challenging as it was to address the different attitude, I managed to motivate the participants by restating the purpose of the exercise and assuring them that the community leaders granted permission to do it. Sometimes, I assigned the role of taking pictures to the man and this kept him motivated.

Throughout my research, I was concerned about my social status. I therefore strove to downplay my privilege of being an international PhD student and having a different economic status to Moneni residents. I made an effort for adequate immersion to enable me to gather data, by, for instance, using public transport and dressing appropriately (not overdressing). Despite being a sensitive researcher, inequality between some residents and the researcher continued and I could not be viewed as a community member. During the different interviews and focus group discussions I had to make the purpose of the research clear to the interviewees as they were at first suspicious that I was a 'spy' of Manzini City Council, by virtue of having worked for the organisation before pursuing this research. In some instances, such as in focus groups, I had to show both the letter from Institute of Development Studies stating my mission as a research student and also my Sussex student identity card, which proved helpful. The strength of being known in the area in my case was that some of the respondents viewed the interviews as a chance to vent all ill feelings they had about the City Council and sometimes about the way Council officials supervised the project; hence, in that way I collected important information which neither a complete outsider, nor a complete insider, would obtain. However, in most cases the interviews ended up being more pleasant with interviewees indicating that I should come back if I needed more explanation on any issue. Furthermore, the strength of this study is that since most participants were aware of my familiarity with the SUDP and the community thus data collected is to a larger extent valid.

1.8.6 Research ethics

Issues of land tenure in Swaziland can be personal and emotive and here my familiarity with the issues and experience in dealing with such issues put me in a better position to carry out the research with caution as I am also familiar with the culture. This is necessary when dealing with princes, princesses, chiefs and other respected leaders. Indeed, the fact that I knew how to treat and give respect to the leadership enabled me to get cooperation from the leadership. I even managed to have an interview with the senior traditional leaders, including the Senior Prince and Acting Royal Governor of Ludzidzini. Even

with regard to government officials I managed to set up appointments with senior officials with less difficulty because I am versed in the culture; formal channels sometimes are not effective when setting up appointments with such officials. I needed to exercise some caution in dealing with Municipal Council's primary documents as I had access to most of the primary documents and had to protect sensitive information. For this reason I have not attributed authorship to sensitive information extracted from documents. I sought consent of interviewees to participate in the interviews and for those people who were unwilling, I respected their decision. The study is not expected to cause any harm to participants, they voluntarily participated and the nature of the study is not likely to cause any risks. Further, information gathered from subjects will be used for this study only. Taking such caution is important because land tends to be a very personal issue. With individuals that I quote in this study, I asked for their permission. I also tried to avoid using judgmental statements in my work. To hide the identity of participants I used pseudonyms. There was no physical harm to myself during field work, more so because Swaziland is a relatively peaceful country and respect for one another is highly valued. The research is complied in accordance with the University of Sussex ethical guidelines.

1.8.7 Personal reflection

In this section, I present some personal reflections based on my experience in conducting this study, with much focus on the data collection stage. The insider status that I had in Swaziland benefited the study as discussed above. I was able to access most of the information. Even the experience I had as a development practitioner, for instance in working with communities and also conducting social surveys, helped me avoid many problems such as saying things that would set me against interviewees. In particular, understanding the culture proved to be important throughout the project. However, in this issue I cannot claim to have excellently complied with all customs because I flouted some aspects. Illustratively, when I went to interview the Traditional Governor of Royal Villages at the Central Royal Village known as Ludzidzini, I was rebuked by an elderly man for sitting in a wrong position, having my back against the Palace which in Swazi custom indicates disrespect for the Royalty. The rebuke made me quite uncomfortable and I became anxious how the Governor would treat me, should I violate any cultural aspect. If I were to do the research again I would not just assume that I know the culture, instead I would find an emissary, preferably who is versed with royalty customs to accompany me. This was a lesson to me. In spite of my fears though, the Acting Governor treated me well.

In addition, due to the experience I had, I managed to interview participants on sensitive subjects without limitations. For instance, I never tried to justify or argue with Makhubu, an aggrieved resident

who blamed City Council officials for compensating his former wife for vegetation destroyed in spite of his complaints. During the interview, Makhubu got angry and highly emotional and explicitly directed his accusation towards me arguing that I had failed him. My previous experience helped me to manage the tensions well and got him to continue answering my questions and he even encouraged me to come back for further clarification. Please see a full analysis on the case of Makhubu in Chapter Six of this thesis. As a result of the experience I had in dealing with communities, I obtained in-depth data that is useful for this study.

I had refused an offer to work for the City Council during field work. Had I accepted this offer, it would have been hard to get the cooperation of residents, who are quite resentful to this organisation. In this study, some residents were suspicious and thought I was a ‘spy’, when they realised I was distancing myself from the organisation’s operations, they began to believe me.

1.9 Structure of the thesis

The study has been organised into seven chapters:

Chapter One presents a brief introduction of the study, covering the research problem, the rationale, and introduction to the case study and theoretical framework.

Chapter Two sets out the local context where the study was conducted and gives a historic background to the complex land tenure systems in Swaziland. In addition, this chapter also explains the genesis of the informal settlement challenge and presents a profile of the informal settlement of Moneni, a case study area. The chapter aims to enhance an understanding of the empirical chapters through providing necessary historical and contextual information.

Chapter Three describes the Swaziland Urban Development Project and its official role in upgrading informal settlements. It describes the historical and political factors that led to the project initiation, the institutions and actor involved its priorities, objectives and components, and the rationale behind them. It also presents the formal perspectives on successes and failures of the SUDP and legislations and policies that the Ministry of Housing and Urban Development reviewed and formulated in an effort to improve the project. This chapter is necessary because the SUDP is used as a case study.

Chapter Four examines the co-existence of the traditional and modern authorities administering urban land tenure systems in the informal settlements. It examines how the socio-political dynamics emanating from disagreements over jurisdictional issues played out during implementation of the SUDP.

Chapter Five focuses on how residents of informal settlements were affected by the ambiguous interplay of the traditional and modern authorities. It challenges assumptions made during formal planning and implementation of the SUDP concerning benefits to residents, and demonstrates the significance of the official lack of understanding of the complex interplay between modern and traditional authorities.

Chapter Six is more concerned with how women were/are affected by the SUDP given the customary and statutory laws governing land tenure in Swaziland.

Chapter Seven provides conclusions of the thesis.

Chapter Two: The genesis and persistence of land-related contestation

2.1 Swaziland: Contextualising the research

The Kingdom of Eswatini (Swaziland), as it is passionately referred to by its citizens, is a small country located in the Southern part of Africa and is about 17,360 square kilometres. Swaziland is land-locked, bounded in the east by Mozambique and on the other borders by South Africa (See Figure 1.1 below). This country, through the leadership of King Sobhuza II, gained independence in 1968 from the British administration and has ever since enjoyed its sovereignty. This sovereignty is exercised through a unique dualistic legislative structure intended to harmonise the traditional absolute monarchy with a Westminster type of government. The uniqueness of the system also lies in that the King and the Queen mother rule together. Eswatini, the colloquial name preferred by locals is expressive of their language, which is SiSwati, and of the history of the nation as it was named after King Mswati II ‘who succeeded in uniting the various clans’ (Matsebula 1972: 22). This is the only native language that this nation boasts of, spoken by 97 per cent of the population, and English is a second official language.

Figure 1.1: Map of Swaziland



The country has a population of approximately 1 million and population density of 53.4 persons per square kilometre. The relations that the country had with Britain and South Africa is seen as the all-determining factor for the Swazi economy, but also of the socio-economic structure of Swaziland as a whole (Neocosmos 1987). In spite of the fact that Swaziland is a low middle income country with a Gross Domestic Product real growth of 2 per cent in 2010 (CIA 2010), 63 per cent of Swazis live below the poverty line (UNDP 2011). As of 2009 the Gross National Income per capita was US\$2,564.4. Household income or consumption by percentage for the highest 10 per cent was 40.1 per cent, and 1.7 per cent for the lowest 10 per cent of households. This income distribution indicates the level of inequality existing in the country. Agriculture contributes 8.6 per cent of the GDP (CIA 2010), whilst

industry contributes 42 per cent and services 49.4 per cent. These figures show the importance of the industrial and services sector in the economy of Swaziland, which due to their location in the urban centre act as a pull factor to many people, thus encouraging the urbanisation process. In the urban areas, the rate of residents in informal settlements is more than 60 per cent (World Bank 2002) and this serves as an indicator of the alarming rate of poverty. The history of Swaziland, discussed next, is important in understanding the challenges encountered as a result of this urbanisation process.

In the sixteenth century, the Bembo-Nguni were amongst the Bantu-speaking people who migrated from the far north to the south-eastern regions of Africa in search of pastures for their cattle (Kuper 1947; Hughes 1964; Rose 1992). The tribe that settled in present day Swaziland in about 1750 was led by King Ngwane III. The Swazi nation subsequently referred to themselves as *BaKaNgwane* which means people of Ngwane (Kuper 1947; Matsebula 1972). King Ngwane died in 1780 and was succeeded by Ndvunganye who reigned until about 1815. King Sobhuza I conquered many tribes and these conquered tribes were consolidated into the tribe of BaKaNgwane. Sobhuza I built his Royal Residence at Lobamba. Lobamba is the traditional and legislative capital of Swaziland; the Parliament of Swaziland is also in this area. Levin (1997: 11) notes 'the Swazi Nation as it is known today was developed through the military prowess and diplomatic shrewdness of King Sobhuza I.' His son Mswati II, ruled from 1840-1868 and also expanded his territory through conquest. He offered protection to people from outside the country who were fleeing from their enemies and gave them land, and in return they paid allegiance to the King (Matsebula 1972). Those conquered tribes were 'permitted to retain political control over their own groups provided they submitted to the lordship of the Dlamini' (Hughes 1964: 47) who are the royal line. This period of nation building by the King was a very defining era in terms of the genesis of the many elements of Swazi tradition, and particularly those with regard to land tenure. Royal villages were constructed in strategic places. Thus the powers of the chiefs are not new, but date back to this time when the leaders of the groups were accorded political control. Their subjects could only access land through clan membership and by paying allegiance to chiefs or clan leaders. The privileges that the chiefs had in controlling and distributing land was a means of maintaining dominance over their subjects (Levin 1997), as discussed in Chapter Four, this is still effectively the case especially in Swazi Nation Land and some informal settlements with such a traditional structure.

2.2 The land problem begins

Most writers attribute the beginning of the land problems to Mbandzeni's reign (which lasted from 1875 to 1889). During this period the number of white settlers moving into the country in search of

grazing land, mineral concessions and as missionaries escalated (Kuper 1947; Hughes 1964; Matsebula 1972; Crush 1980; Levin 1997). Matsebula (1972: 31) therefore sums up this period, which has become known as the concession era, in the following manner: ‘there followed the most difficult time in the history of Swaziland – a time which has left its indelible mark and problems which have never been satisfactory solved’.

When King Mbandzeni granted grazing land and mineral concessions to the British and Boer settlers in exchange for money and other gifts; he believed he had granted them user rights (Kuper 1963; Matsebula 1972; Nkhambule 1983; Rose 1992; Levin 1997; Mushala 1998) as opposed to selling the land. However, the settlers’ version of usufruct rights was different in that they treated the concessions as permanent rights to the land and quickly started marking their boundaries and fencing off the land. This was contrary to Swazi customary law, which states that land cannot be sold, that individuals are granted user rights and ownership rests with the King. Through these concessions, the Swazis lost two-thirds of their land. There were several efforts to address this problem. The British High Commissioner promulgated the Partition Proclamation of 1907, which compelled concession holders to hand back a third of the total average of land to the Swazis (Matsebula 1972; Booth 1983; Levin 1997; Rose 2002). This followed the appointment of a Concession Committee and its recommendations in 1904 which included a reduction of one-third from every concession to be reserved as Crown Land (see Chapter Two for further elaboration of the different types of land tenure) and for Swazis. The High Commissioner Enraght-Moony issued the 1907 Proclamation to enforce the recommendations of the committee (Matsebula 1972). This proclamation saw the establishment of the three-fold division of land namely Swazi Nation Land: 976,558 hectares. Freehold Land: 687,635 hacters and Crown Land: 63,549 hectares. Swazis were dissatisfied with this land partition settlement (Matsebula 1972; Bonner 1982; Daniel and Stephen 1986) but eventually accepted it with bitterness; hence, Malunge, a senior regent lamented:

The land has been divided. We have no power to stop the government or to say do not do this, but all I say now is that the partition is finished, it is done. The government knew that we did not like this partition...we have no power...we leave the whole question in the hands of your Lordship (Selborne) and we wash our hands of the whole question (Daniel and Stephen 1986: 57)

Further, in 1922 King Sobhuza II embarked on a land reorganisation exercise which was basically a repurchasing of the land lost to the settlers through concessions. Matsebula (1972) thus identifies the concessions period as the birth of land problems in Swaziland and adds that these problems have never been solved (1972). This land reorganisation exercise sought to reclaim land and power. This thesis demonstrates the ways in which the problems associated with land have actually been compounded

and made even more intricate over the years given the continual urban growth and the development of informal settlements.

These tenure systems (concessionaires, crown land and Swazi Nation Land) brought about by the 1907 partition operated in complex and ambiguous ways, for instance, the concessionaires which had not paid cash for the land (except for the small gifts given to King Mbandzeni) were not made to compensate the Swazis for the lost land under this proclamation. Even the one third reserved for the Swazis was still British Crown Land, which exacerbated the opposition from Swazis manifested in resistance to farm evictions. This bitter experience explains why land is an emotive subject for Swazis (Rose 1992). In addition, it explains why they are wary of any new form of tenure, as this study will demonstrate using the case of Moneni, a community that resisted the introduction of the 99-year lease. The three types of tenure described in the next paragraph emanating from the proclamation, are still legally binding and it is the interplay of these tenure systems, namely, Swazi Nation Land, Freehold land and Crown Land in the urban areas that this study is examining.

Swazi Nation Land is characterised by communal ownership, the King is said to own it on behalf of the Swazi nation and it cannot be sold. Individuals accessing this land are provided with user rights by the chiefs (Matsebula 1976; Nxumalo 1998). Security in Swazi Nation Land is guaranteed by Swazi customary law and there is no documentation given to the allottee as proof of ownership (Hughes 1964). This contrasts to freehold land which is land owned by individuals or privately-owned land which can be bought and sold and which has formal titling certification. Crown lands refer to farms purchased by government from the Europeans and any piece of land that is owned by the government and under the responsibility of the Ministry of Housing and Urban Development. Table 2.1 below helps to reveal the complexity of the existing land tenure systems.

Table 2.1: Summary of the types of land that the study found (currently existing)

Land form		Status	Owner	Allocation powers
Swazi Nation Land		Vested in the King in trust for the nation and allocated by chiefs	Communal	Chiefs have much control in that they allocate the land. Settlers are mandated to pay a settling fee (a beast or a sum equivalent to its costs) normally determined by the chief.
	Ingwenyama In Trust for the Nation	Land controlled by national institutions such as Tibiyo TaKaNgwane on behalf of the King	Owned by the King	These farms are controlled and allocated by Tibiyo TaKaNgwane with the consent of the King. Chiefs are not expected to allocate land in these farms.
		Controlled by the Ministry of Housing and Urban Development (within the urban area) Controlled by Ministry of Agriculture and cooperatives (rural areas) Administered under a 99-yr lease	King owns it and is leased in his name.	Controlled by the ministry responsible for local administration. Currently in the urban areas, it is the the Ministry of Housing and Urban Development. The Minister has powers over this land and allocates it in accordance with the the Crown Lands Disposal Act 1911.
Freehold Land		Private plots, Commercial farms, estates and ranches	Title Deed Land	Private farm owners have control over sale of the land. Statutory laws govern this land. Urban local authorities control land use.
¹⁴ mixed/hybrid tenure system	Sectional Title	Owned by many people/building divided into sections and common property	Privately owned	Available on market for ownership.
	99-year lease	Holder of title deed given 99 years but does not own the land	Mix of Freehold and Swazi Nation Land characteristics. Holder granted user rights but land not sold	In the urban areas, the MHUD is the Lessor and controls allocation of this land. Residents cannot transfer the property without the approval of the Minister.
Concession Land ¹⁵	Agreement	Holder uses it at the pleasure of the King	King	Governed by the concession Order of 1973. A concessionaire only has user rights over the land but does not own the land. The King can take it back at any time.

Source: This table combines information from different sources (Government Reports, Scholars and SUDP preparation documents and interviews with the Deed Registry).

¹⁴ This type of tenure has not yet been operationalized in Swaziland despite the availability of the Sectional Titles Act, 2003. Key informants told me that the Government is still working on a policy to guide its implementation. Most of the key informants though were not even aware of this type of tenure.

¹⁵ According to the Deeds Registry, less than a per cent of Concessions are still in existence and the Constitution 2005, Section 211,1 states that all land (including any existing concessions) in Swaziland, save privately held title-deed land, shall continue to vest in *iNgwenyama* in trust for the Swazi Nation.

As is evident in Table 2.1 above, the broad categories of Swazi Nation land and privately owned land are further subdivided into categories and the status of land is sometimes defined by its context, for instance, urban land is by definition privately owned. However, many people understand these categories differently and this creates further complexity. For example, the Deeds Office that registers land and the Surveyor General argue that there is no unregistered Swazi Nation Land. They argued that all Swazi Nation Land was surveyed and registered as Ingwenyama In Trust for the Nation. In addition, different institutions and authorities are involved in land administration, such as Tibiyo¹⁶ and Tisuka.¹⁷ This, in turn, creates further complexity and even seemingly obvious issues such as the categorisation of land into private or communal land is not always clear. Thus, even key informants from municipalities and government officials, were unclear about how many tenurial types exist in Swaziland and their answers varied from two to five. As this research will later demonstrate (see Chapter Three), even land administrators, lawyers and researchers present contradictory information. Nonetheless, what everyone is clear about is the role of the Swazi King. He is considered the pillar of the nation. He rules, however, through his people and with their support. 'A King is a King by its people'. During field work I conducted in 2009/2010 it was common to hear Swazis saying '*sibayiphi inkhosi tsine?*' ('Don't we belong to the same King?') when they are deprived of certain resources they believe they are entitled to. Other participants in this study who were not happy with the SUDP expressed the same metaphor. Intricately linked to the King's ability to rule the nation, is the fact that control and ownership over natural resources such as land has always rested with Kings (Kuper 1947; Levin 1997). In Swaziland, land belongs to the King and it is believed he has the leverage to do anything with it (Marwick 1966: 158) and this explains why the traditional leadership of Moneni continued seeking His Majesty's intervention on the issue of authority in Moneni (see Chapter Four for details). This forms the basis of the political structure of Swaziland.

¹⁶ Tibiyo is a Royal Investment fund. The mineral royalty funds from which Tibiyo was created (Levin 1997), were kept in the custody of the Swazi National Treasury, established and controlled by the King directly, and do not go into the coffers of the Central Government and is meant to fund national customs ceremonies.

¹⁷ Tisuka is an organisation created from funds from Tibiyo which has the mandate of building houses and offices to rent out (<http://ww2.tibiyo.com/home.asp?pid=9>)

2.3 Political organisation

Swaziland got its political independence in 1968; however it retained its traditional Swazi political system.¹⁸ This explains why Kuper (1947) observes that Swazi culture is a modern creation which is a mixture of traditional and western elements. Kuper (1947) also emphasises that the independence constitution legitimised a dual system which was already in operation.

According to Swazi tradition, the King rules side by side with the Queen Mother and is also assisted by the Swazi National Council (now known as Likoqo Advisory Council (Kuper 1978; Nxumalo 1998; Rose 2002). The King holds supreme executive, legislative and administrative powers. The Queen Mother, who is also known in siSwati as the '*Indlovukazi*' (translated as lady elephant) plays a more symbolic role and tends to be in charge of the national rituals. However, if a King dies, or is still too young to assume his position, the Queen Mother takes over until such time that a new King is installed (Marwick 1966).

Most literature on local government in Swaziland shows that the Swazi traditional power structure is centralised. Before colonisation, the Swazis had a traditional political system which was not based on any constitution but, rather, on uncoded Swazi law and customs (Denning 1969). In the pre-colonial era, disputes were resolved by the chiefs and the Swazi National Council rather than formal courts, which were nonexistent (Matsebula 1972; Potholm 1972). The King also summoned his subjects to his royal kraal¹⁹ whenever there were issues that he felt needed to be deliberated upon. Although The King was supreme, he ruled through a complicated system of chiefdoms. Over time, and under the influence of colonialism, this was converted into a form of local government (Potholm 1972; Reddy 1999). Rural District Councils were formed which were popularly known as *Tinkhundla* and these were intended to be closer to the people. All these District Councils, which were established in 1966, had a number of chiefs (*tikhulu*) under them grouped on a geographical and hierarchical basis. The chiefs had neither executive nor financial powers, but acted as intermediaries between the King and the people (Daniel and Stephen 1986). Chiefs were also responsible for ensuring the preservation of Swazi culture. The chiefs arranged community meetings to discuss certain issues at the residence, known as *Umphakatsi*.

¹⁸ The King has all executive, legislative and judiciary powers. The country has a unique local government system where the King rules through a traditional system, Rural Districts known as the Tinkhundla system. Chiefs govern designated communities under the Tinkhundla system and report directly to the King.

¹⁹ Royal kraal is a Swazi word used to refer to Royal homesteads especially those tasked with ceremonial functions.

An important function of the chief was to control land on behalf of the King (Marwick 1962; Kuper 1963; Matsebula 1972), that is, distributing it to Swazis, and these are the functions that the Senior Prince of Moneni, who is involved in the contestation over jurisdictional matters of Moneni closely examined in Chapter Four, executed. Even to date chiefs still have a prominent role in Swazi society and are classified under the local government structure. The country is divided up among chiefs who govern on behalf of the King, ‘keeping peace, order and good government of their respective areas’ (Marwick 1966: 6). The position of a chief is inherited through patrilineal lineage (Swaziland Constitution 2005). Chiefs have their *tindvuna* (headmen) and councils who assist them in executing their administration.

Local government is divided into two parts, namely, urban authorities and traditional authorities. The traditional authorities are made up of the chiefs and District Councils called Tinkhundla (Reddy 1999). In keeping with past traditions, the 55 Tinkhundla currently in existence form meeting points for communities or chiefdoms. In addition, the country is divided into four regions for administrative purposes (see Figure 1.1) and each region has a principal executive who is in charge for all administrative issues in the district (Potholm 1972; Reddy 1999). This officer is a regional administrator (formerly known as a District Commissioner). The regional administrators are mandated to deal with land issues even in rural areas and it is therefore quite acceptable for them to attend to land disputes. The Crown Lands Temporary Occupation Act of 1964 mandates the Regional Administrator to issue building permits for up to one year (Simelane 2002), which also explains the fact that some residents of the informal settlement of Moneni said they got permission to settle from the Regional Administrator. The Regional administration office can therefore be described as neither traditional nor modern as their functions cut across both traditional and modern structures of local government. A regional administrator reports to the King on traditional and cultural duties and to the Deputy Prime Minister on development and other duties (UNDP 2003). The regional Administrator’s status is equivalent to that of deputy minister (Reddy 1999; Swaziland Constitution 2005).

The modern, western form of local government operates at the regional level and consists of twelve urban local authorities. The operations of the local authorities are guided by the Urban Government Act of 1969, as well as through ancillary acts such as the Town Planning Act of 1961, the Human and Settlement Act of 1988, the Building and Housing Act of 1968, and the Urban Government Policy of 1996. The authorities’ jurisdiction within the gazetted urban areas is defined by the MUHD (Reddy 1999; Muzvidziwa and Zamberia 2006) whose ministry also serves as the local authorities’ overarching body guiding their operations. These urban policies are seen – by the Swaziland Government – as not only outdated but also uncoordinated, thus limiting the government in her efforts to address the planning-related needs of the people (Swaziland Physical Planning Policy 1999). On the contrary, the

customary laws are still respected and highly upheld at least by the traditional authorities, and are not seen as outdated though they date from a much earlier period. The legislation are not only outdated but also conflict with each other and are thus believed to be constraining urban authorities' efforts to address the issue of urban growth in the country. An illustration of the conflicting legislation is seen in the inconsistency between the Crown Lands (temporary occupation) Act No. 22 of 1964, and the Human Settlement Act of 1988. The Crown Lands Act mandates the Ministry of Natural Resources and Energy to permit settlements on unsurveyed land including urban land. According to the Crown Lands Act 1964, in spite of the existence of the Human Settlement Authority (HSA), a body mandated to approve the establishment of a township, the ministry can allow squatters by issuing temporary permits, to occupy unsurveyed land. Participants at a national workshop²⁰ on land held prior to SUDP implementation pointed out that reviewing such legislation could improve land administration and help in addressing the challenge of land shortage brought about by urban growth (University of Swaziland 1988; Overseas Development Administration 1995).

2.4 Urbanisation in Swaziland

Swaziland inherited a colonial administration development strategy which emphasised rapid industrialisation (Miles-Mafafo 2000). The market tended to favour the manufacturing sector and therefore agriculture suffered; as a result rural-urban migration ensued, as foreign investment increased. However, the lifting of sanctions on South Africa in the 1990s saw a decline in foreign investment in Swaziland and one of the contributing factors is that her neighbour, South Africa, tends to attract most international investment (Forster and Nsibande 2000; Miles-Mafafo 2001). This is contrary to the post 1986 era where foreign investment increased as a result of economic sanctions that had been imposed by the International community in South Africa which saw many companies relocating to Swaziland to avoid the sanctions (Miles-Mafafo 2001). Rural-urban migration is not only a result of rural degradation but also economic development; the development strategy perpetuates rural-urban inequality in the country

²⁰ The National workshop on land related legislation was held from 23-27 August 1988 at Piggs Peak, Swaziland. Participants drawn from the Ministry of Agriculture and Cooperatives, Ministry of Natural Resources and Energy, Ministry of Justice, Ministry of Economic Planning and Statistics, University of Swaziland, United States Agency for International Development, University of Wisconsin, local chiefs, a Senator, Ministry of Interior and Immigration and Development Consultants. This period was prior the advent of the Ministry of Housing and Urban Development and urban land was under the Ministry of Natural Resources and Energy. It is not clear why the City Councils did not take part in this workshop yet they play a key role in urban land management, especially in dealing with the challenges of urbanisation.

resulting in a concentration of investment and a high rate of population growth in larger urban centres such as Manzini and Mbabane (Miles-Mafafo 2001; World Bank 2002; Muzvidziwa and Zamberia 2006).

Swaziland, like most developing countries, is ill equipped to address challenges brought about by urban growth, as manifested in the proliferation of informal settlements within and on the peripheries of the urban boundaries (Reddy 1999). According to the 1986 census, 16.5 per cent of the population of 676,089 lived in urban areas. The UN World Urbanization Prospects projected that the Swaziland National urban population growth would be at 5 per cent per annum between 1985 and 1990, and made projections further into the future. The tables below demonstrate this projected urban growth of Manzini and Mbabane.

Table 2.2: Annual projected percentage growth of major urban areas in Swaziland

	1976-1986	1986-1996	1996-2006
Manzini Town	4.89	6.83	5.07
Manzini Peri-Urban	3.46	4.82	3.58
Mbabane	4.97	6.94	5.15

Table 2.3: Projected population by major urban centers 1976-2006

	1976	1986	1996	2006
Manzini Town	10,019	16,343	32,356	53,721
Manzini Peri-Urban	18,818	26,585	43,049	61,581
Mbabane	23,109	37,991	76,047	127,275

Source: United Nations (1987) *Prospects of World Urbanisation* cited in Hoek-Smit 1988.

The nature of growth in the main cities of Swaziland, namely, Manzini and Mbabane, has been largely informal. Most of the people who migrate from rural areas to the urban areas in search for job opportunities settle in unplanned or unserved areas (De Groot 1989; Foster and Nsibande 2000; Muzvidziwa and Zamberia 2006). Sixty per cent of urban Swazi households are found in informal settlements (De Groot 1989). Uncontrollable urban growth has thus resulted in problems regarding housing and services provision (Miles 2000; Poverty Education Strategy and Action Programme 2006).

The main informal settlements are found. Hoek-Smith (1988) divides Swaziland's informal settlements into two types namely, informal settlements controlled by City Councils and informal settlements controlled by Regional Administrators. The latter is one where chiefs have been recognised by the government as being involved in land administration. Most of the informal settlements, especially, within the urban areas, are found on crown land²¹ or government owned land. Aggravating the challenge of urban growth is the complex and dualist land tenure system. Urban expansion has also resulted in the creation of informal settlements in Swazi nation areas that border the cities. Subsequent incorporation of these Swazi Nation areas, administered by traditional structures, into the urban boundaries which are under the authority of the urban local authorities, has created particular problems. Part 11 of the Urban Government Act No 8 of 1969 reads:

Subject to the Provision of this section the Minister may by notice in the gazette

a.) Declare any area to be a municipality

b.) Assign a name and alter the name of the municipality

c.) Define the boundaries of any municipality and alter such boundaries

d.) Declare that any area shall cease to be a municipality.

The Swaziland Physical Planning Policy dictates that once the areas are gazetted as urban, the traditional authorities cede their jurisdiction over them. Over the years, since the establishment of local authorities in 1969, the incorporation exercise has caused a myriad of complicated dynamics (those relating to the SUDP in particular will be illustrated in later chapters). Traditional leaders have continued to exercise their authority in these areas and of course tapping into their legitimacy as leaders of the people which they have acquired over decades. The Government is not unaware of these complexities and the Swaziland National Development Plan 1996-2006 indicates the implications of declaring an area to be urban to be as follows:

- The decision to declare an area to be urban impacts very differently on different people.

²¹ Crown land was land reserved by the state pending its allocation for urban or government use or even change of tenure system (MHUD 1995).

- Chiefs tend to resist formal urban incorporation since this threatens both the integrity of the community of their followers and for those whose land abuts such areas cuts off a valued source of income from the gift that allocation of valued land often entails.

In a Swaziland Draft National Report for the United Nations Conference on Human Settlements, held in Istanbul in 1996, the MUHD, addressing the issue of Swazi Nation Land in urban areas, asserted; ‘No matter how much affected chiefs are brought into the process of allocation of initial leases, their authority and power will be permanently reduced by the fact that land will become to all intents alienable since the purpose of the lease is to allow the land to be used as collateral’ (1996: B10).

Another challenge with regard to urbanisation has to do with scarce resources and ill-equipped or understaffed cities (De Groot 1989; Miles 2000; Muzvidziwa and Zamberia 2006). The Slum Clearance Study conducted in Manzini and Mbabane in 1979 observed the technical and practical difficulties in slum clearance that confront a government. It further concluded that ‘solutions to the problem of illegal occupancy are often postponed because of the reluctance of local governments to accept into the municipal area the outlying squatter settlements with all their political and financial constraints’ (Ministry of Works Power and Communication Housing Division 1979: 8).

Slum areas in Swaziland are heterogeneous in nature with respect to characteristics and land tenure history, hence; the above report (Ministry of Works Power and Communication Housing Division 1979) recommended that they should be dealt with individually. Nonetheless, it is generally agreed that the informal settlements in Swaziland lack adequate access to services and that Swaziland City Councils lack the resources to provide services. For instance, Hoek-Smith’s study (1988) found that nearly all households in informal housing use portable tubs for bathing, wood and kerosene as main source of fuel for cooking and that internal roads are very poor (see Appendix 2 showing access to services).

2.5 Legislation guiding Swaziland’s urban land management

In an effort to guide and control the process of urbanisation, the Government of Swaziland formulated policies for urban areas and initiated a process to institute formal security of tenure (World Bank 2001: 1). These policies include the Urban Government Act of 1969, the Town Planning Act of 1961 and the Building and Housing Act of 1968. The Urban Government Act is the main act that defines the powers and functions of local authorities. There is also the Human and Settlement Authority of 1969 which requires that a layout plan be prepared for every area that is being formalised. The Rating Act of 1969 mandates local authorities to levy property tax to all immovable properties in the city; except those

exempted by law. Finally, there is the Crown Land Act of 1964²² which details how government-owned land should be allocated.

The MUHD monitors issues of housing, urban development and urban land issues; it is an overarching body for all local municipalities and city councils. Most informal settlements have occurred on Crown Lands, which is Government-owned land, but within the urban boundary, although some have arisen on private farms. Crown land is administered differently from Swazi Nation Land; the Crown Land Act 1911 is the legal instrument that guides its allocation. With regard to Swazi Nation Land, chiefs are mandated to give permanent user rights and not ownership to Swazis on behalf of the King. Customary land is not sold and the allottee is only expected to pay allegiance to the chief (Matsebula 1972; Rose 1992). Further, under this settling (*khonta*) system, in order for the allottees to fully ingratiate themselves with the chief and the community, they have to provide a cow to the chief and the inner councils, but only if affordable; hence, even the poorest men have user rights to land.

The anti-poor nature of the legislation guiding urban development in Swaziland has propelled people to find alternative ways of accessing land and housing, resulting in the evolution of informal settlements on crown land or Swazi Nation Land close to the urban centres.

2.6 Evolution and conditions of informal settlements in Swaziland

The history of informal settlements in Swaziland plays a crucial role in helping us better understand the politics and actors that are involved in addressing the challenges of informal settlements. Most informal settlements in Swaziland's urban areas are on Crown land and Swazi Nation Land (MHUD 1992; World Bank 2003), although there are some on privately owned land (Neocosmos 1987). The first few inhabitants of these informal settlements on government owned land, obtained temporary permits to settle the land from the former District Commissioners and they were migrants who came to town in search of jobs. Initially, they paid a monthly rental fee of two Emalangeni (E2.00) or US\$0.23, which was collected by a messenger hired by the District Commissioner and the permits were renewable every yearly (Simelane 2002). At some point the District Commissioner stopped monitoring the inhabitants and

²² Under the Crown land Act individuals who have been allocated land in unplanned settlements had to build temporary structures. A building ban had been passed in such settlement against any building of permanent structures. The informal settlement of Moneni therefore was expected to comply with this but this tended to create tension between the municipality and the residents of Moneni as some violated the ban and the traditional leaders continued allocating parcels of land to interested individuals.

the collection of the monthly rental fee came to an end. The inhabitants had been categorically told to build temporary structures; this suited them and helped them to be in close proximity to their work places (MHUD 1993; key informants 2009). Due to the lack of monitoring, they and other inhabitants decided to build permanent structures. Frequently, unofficial leaders emerged and started illegally allocating pieces of land to other Swazis desperate to find accommodation closer to their work places or industries, in return for financial gains. Swaziland's informal settlements are predominantly characterised by a lack of security of tenure, houses built of timber, mud or stones; others are covered with cardboard and plastic sheets (Hoek-Smit 1988; MuzVidziwa and Zamberia 2006). However, houses built of modern material are also found and certain households do have piped water and proper sanitation. Generally though, there is poor water supply and inadequate sanitation, no proper solid waste disposal, a lack of proper infrastructure, a high rate of unemployment and crime, environmental pollution and disease caused by the squalid living conditions (Kanduza and Mkhonza 2003). The profile for informal settlements in Swaziland cities is as follows: 58 per cent of the plots contain multiple households. Of these, 21.4 per cent contain three households, while 41.2 per cent are single households. Thirty seven per cent of the informal settlements households are headed by women and these have more children resident than in the remaining 63 per cent of households (World Bank 2002).

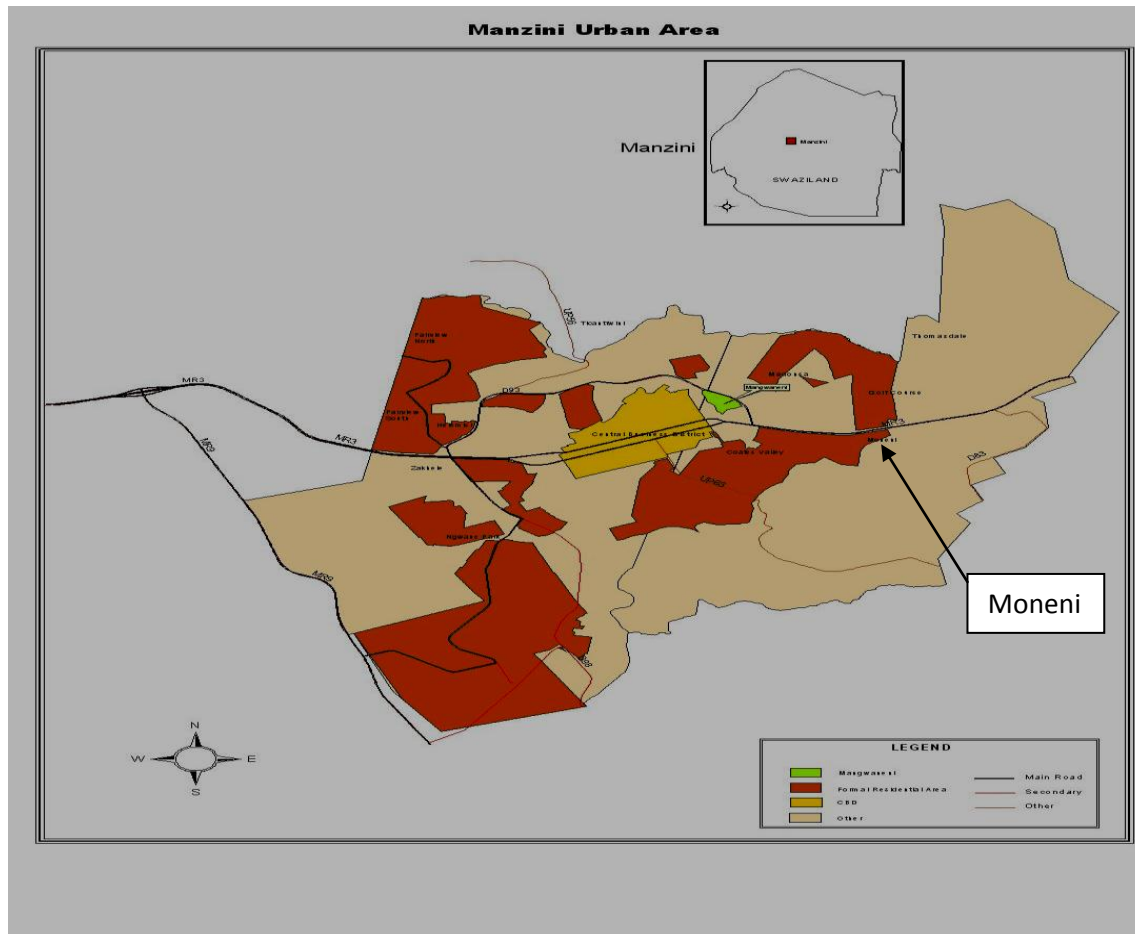
Although the informal settlement of Moneni fits within this general picture of Swaziland's informal settlements, it has a slightly different history. As it was selected to be a pilot for the SUDP, which was eventually implemented in Moneni,²³ and since settlement will be used to explore the interplay of different tenure systems and their effects on residents, explaining its evolution is necessary.

Manzini city, as Swaziland's oldest city, had its first town plan drawn by DJA Danford in 1890 during King Bhunu's reign and has since acted as the country's administrative center (Hall 2000). As shown in Figure 2.2 it is located close to Matsapha, which is an industrial estate characterised by a diversity of products and services (Daniel and Stephen 1986). The central location and proximity of the city to the Matsapha Industrial site makes it an attractive place to migrate from rural areas to look for jobs. Manzini's urban growth rate is 6 per cent. Manzini town was upgraded to a city status by King Mswati III in 1990; as a major contribution towards urban development (Sihlongonyane 2003). This gave the city autonomy and enabled it to charge property tax on all ratable properties in the city, as well as to

²³ The area has roughly 300 households with an average of 6.9 people per household. The general plan of the area approved in 2007 by the Surveyor General shows that there are 500 plots available in the area; this figure includes vacant plots.

collect user fees. Figure 2.2 below shows the urban areas and their classification according to planning standards.

Figure 2.1 Manzini Urban Area



Source: Surveyor General's Office, Swaziland (2010)

The population census of 1986 revealed that 65 per cent of the urban population lived in the urban areas of the Manzini – Matsapha – Mbabane corridor (Swaziland Government 1986; De Groot 1989). The central location makes it a prime area for transportation networks linking other areas in the country; hence, there is overcrowding and traffic congestion. The Manzini region is the most prominent and largest region in Swaziland. The urban population of Manzini is estimated to be 105,000 people, a figure including residents of both planned and unplanned areas (Manzini City Council Annual Report 2002/2003). The profile of Moneni, an informal settlement in Manzini, is presented below.

Moneni is located on the remainder of the Farm 838, Manzini and on Swazi Nation Land Lot 165. It is located to the South of Manzini City, along the Manzini – Siteki Road, and situated just off the

road which means it is the first conspicuous residential area as you enter the city. It spreads over about 43 hectares. The informal settlement is 4km away from the city and, in 1993, there were 252 households with an average of 6.92 people per household and a population of 1745 (MHUD 1993). At that time the homesteads had an average of about 1.5 ha of arable land, and crops included maize and vegetables. Residents of this area are also engaged in informal activities such as selling fruits and vegetables on market stalls along the roads and in front of their houses. Other residents engage in brick making, brewing liquor and sewing.

Moneni is originally one of the royal homesteads established by Sobhuza I and revived by King Mswati II who reigned during the period 1840-1868. It was initially established in the heart of the Manzini on the site where a recreational park (the Jubilee Park) is now located. Due to urban expansion, it has had to relocate at least four times. However, all the sites relocated to were still very close to the first site, less than five miles from the first site. The initial relocation was facilitated by the British Administration against the will of the Prince whose resistance was unsuccessful (key informants). Based on this information, it can be concluded that the failure of the British government to relocate Prince Mshoshi to an area far away from the city centre is one of the reason why there are still jurisdictional issues between the traditional leaders of Moneni and the urban authority. An argument could be made that the resistance of the Prince and also his influential position as the King's son might have influenced the government to respond cautiously and differently. On the Western side of Moneni is a high income township, Coats Valley. It is also adjacent to Inyoni Yami Township, which has well built houses. Even during colonial times and even under the rule of Senior Prince Moshoshi, Moneni was considered an 'eye sore' (minutes of Council meeting 1982). The Colonial administration and the then-Town Management Board viewed the Royal Homestead as 'unfortunately sited' and several discussions regarding moving it were held. This was mainly because the Council planned to extend Inyoni Yami Township in order to generate profit. One councilor even said 'It is not just that Inyoni Park Township residents have to face a pig sty on their doorstep - and after all they pay a lot to live there and they should have the right to demand that their neighbors build comparable houses' (minutes of Council meeting 1982). Emphasising what he considered to be an acute need for relocating Moneni people, he continued 'if it must be somewhere at all let them [the government] put it out of sight'.

However, an initial impediment towards aggressively carrying out these intentions was the social position of Prince Mshoshi as a respected royal figure and the support from his followers who paid allegiance to him and who were reluctant to be moved to another area with a different chief. After independence in 1968, the government kept on promising that all squatter settlements on crown land would be cleared, but no action was taken and the growth of the informal settlements continued. The

Moneni Royal homestead was significant in the history of Swaziland because King Sobhuza II occasionally used it for important ceremonies, which were attended by all Swazi people (key informants 2010).

On the question of whether Prince Mshoshi I was chief – and therefore entitled to continue to rule over the people of Moneni – or not, there are opposing views. His supporters include elderly princes and princesses and other traditional leaders, who argue that only chiefs have a right to collect tax. One key informant asserted, as evidence, that Prince Mshoshi I received the honorarium given to the chiefs and even his children were given the benefits offered to chiefs' descendents. Similarly, an article in *the Times of Swaziland* reported that the Manzini Regional Administrator, in an interview with a journalist, had asserted that Prince Mshoshi I was a chief and therefore that the current Prince Mshoshi is Chief.

On the other hand, some people hold the view that the Prince was never a chief, and that he only obtained respect in his capacity as a Prince and he is therefore supposed to pay allegiance to the Elwandle Chief, Mkhatswa. In an interview with the *Times of Swaziland*, the Acting Royal Governor, Mthethwa dismissed the authenticity of the statement that Prince Mshoshi is chief, despite the fact that he is identified on the list of chiefs compiled and filed at the King's offices at Nkhanini. Mtwethwa emphasised that Prince Mshoshi was never a chief and should not have been on such a list. He was quoted as saying 'Only the names of chiefs blessed by Their Majesties find their way onto the list you're talking about,' (The Times of Swaziland, 28 March 2011).

2.7 Conclusion

It remains unclear how this issue will be resolved as both views are supported by prominent princes, politicians and individuals of high standing in the country. As much as this history provides an important context for the study that follows, Moneni remains an informal settlement with traditional structures that have been administering land. Whether Prince Mshoshi II is considered to be a chief or a prince, the underlying matter is that he has distributed land and acquired legitimacy which is on a par with the urban regulations. His authority is seen as a dilemma by the urban authorities including the government and as a delaying factor in the implementation of the SUDP. The fundamental issue is the reluctance to relinquish control of the area to the urban local authorities. This has caused significant complications and has delayed the implementation of the SUDP. The following chapter explores the institutional framework of the SUDP, describing the conditions that gave rise to the project, its objectives and component parts, as well as the roles played by different institutions and actors and the preparatory work relating to land legislation which was supposed to clear the way for its implementation.

Chapter Three: Institutional framework for the Swaziland Urban Development Project

3.1 Introduction

This chapter is concerned with the Swaziland Urban Development Project, which was initiated in the late 1980s, co-funded by the International Bank for Reconstruction and Development (The World Bank) and the Swaziland Government. It describes the historic factors that led to the project initiation and details its objectives and components in addition to the rationale behind them. The chapter explores the in-depth preparatory work that the government of Swaziland engaged in, especially the reviewing of land-related legislation to meet the conditions of the loan of US\$29 million from the World Bank. This chapter also examines the role played by the different institutions involved in the project and explores the policies that guided their operations.

The beginning of the formulation of the Swaziland Urban Development Project (SUDP) can be traced back to the early days of the urbanisation process in Swaziland. In 1979, a decade after independence, the Swaziland Government conducted a study on Slum Clearance in Manzini and Mbabane to identify and assess the magnitude of the slum areas in these cities, to be able to prepare housing projects, as part of the clearance and upgrading of slums (Ministry of Works Power and Communication Housing Division 1979). Informal settlements, an element of contemporary urbanisation (Bolay 2006; Lieberherr-Gardiol 2006) were in the case of Swaziland, just as in many other developing countries, triggered by people's search for work opportunities and income (Forster and Nsibande 2000; Miles 2000, Sihlongonyane 2003). Nonetheless, informal settlements in developing countries were a major contributing factor to the challenge of cities and their seemingly uncontrollable urban growth (Rondinelli and Cheema 1988; Gilbert and Gurgler 1992; Bilsborrow 1996; Satterthwaite et al 2001; Davis 2006). The government's slum clearance study therefore aimed to identify slum areas in Swaziland's main towns and map a way forward with regard to preparations of housing projects. The SUDP was seen as part of the upgrading of slums programme. The study recommended that alternative methods of urban development such as slum improvement and rehabilitation be considered before slum clearance (Ministry of Works Power and Communication Housing Division 1979). The study also pointed out that squatters have demonstrated their capacity for self-development and therefore, if given correct help, they could

contribute to urban and economic development. Although the study helped to identify the magnitude of informal settlements in Swaziland and made recommendations on their improvement, there is no evidence that any meaningful follow-up action was taken until approximately a decade after.²⁴

3.2 State and urban planning

State development from the late nineteenth century onwards has been characterised by high modernism, power of the modern state to implement the schemes design and weak civil society lacking the capacity to resist these plans (Scott 1998). These three elements apply well to Swaziland in the sense that it is the state that sets the direction of the type of development plans to be implemented. It does this through statutory laws such as the Urban Government Act, 1969 which is the main legal framework for the local authorities, the National Physical Development Plan, 1995, the Town Planning Act, 1961 and the master plans detailing land use patterns. The justification for the control of land use is that there are limited resources (Forster and Nsibande 2006). In view of this centralised control, local authorities lack autonomy in planning and their relationship with the government especially the Ministry of Housing and Urban Development in overseeing urban development is unequal (Reddy 1999). For instance, the Urban Government Act, 1969 accords supreme status to the MHUD to dissolve Council and approve appointment of the Chief Executive Officers. The role of the state is important in society (Dugger and Waller 1992), however, supervision by the government has to be minimised and regulated by clear guidelines (Dlamini et al 1999).

In many countries, urban growth is driven by the national governments and promoted by local authorities (UN-HABITAT 2008). The challenge with this is that governments use high modernism and place its faith in 'strong version of the beliefs in scientific and technical progress associated with industrialisation in Western Europe and in North America from roughly 1830 until World War I' (Scott 1998: 89). The extensive control by the central government usually leads to formulation of plans and programmes which are irrelevant to the needs of the people (Muzvidziwa and Zamberia 2006). Due to inappropriate strategies and programmes urban planning in colonial and post-colonial times, Swaziland has been characterised by unplanned development fashioned by individuals struggling for self-reproduction and survival (Simelane 2002). Urban growth in the Mbabane-Manzini-Matsapha corridor

²⁴ Literature on the history of the urban development project in Swaziland (De Groot 1989, Lowsby and De Groot 2007) does not generally refer to this Slum Clearance Study as having a decisive influence.

has been unplanned and unserviced (Miles Mafafo 2001). Local authorities are therefore faced with the challenge of urban growth and the deteriorating conditions in areas where a growing number of inhabitants live (Reddy 1999).

The government embarked on a number of strategies to address the challenge of urban growth and these include the establishment of the MHUD and of the Swaziland National Housing Board, the undertaking of studies and the formulation of policies (Lowsby and De Groot 2007; Reddy 2007). However, the role of the state in urban development, especially with regard to the challenge of informal settlements, has always been one that is responsive rather than proactive and coordinated. This fact is both explicit and implicit in literature on urbanisation in Swaziland (Forster and Nsibande 2000; Miles-Mafafo 2001; Simelane 2002; Sihlongonyane 2003; Muzvidziwa and Zamberia 2006).

Another institution that the central government has had to address in terms of urban development concerns the traditional leaders in the urban areas. The SUDP stemmed out of the realisation that urban expansion had produced new challenges in the form of unplanned informal settlements, and the incorporation of Swazi Nation land into the urban boundary. This, in turn, resulted in contestation over issues of authority (Foster and Nsibande 2000). Although the main legal framework, the Urban Government Act, 1969, does not recognise traditional structures in the urban areas, the MHUD have had to address them (Habitat II Swaziland Draft National Report 1996; Manzini City Council 2003; SUDP Valuation Report 2008; key informants 2009) and to seek their permission to access land for infrastructure. For instance, the MHUD had to negotiate with the traditional leaders of Moneni.

These conventional approaches to urban planning based on modernisation are not appropriate to address the conditions or problems of the developing world and have resulted in more informal developments (Rakodi 1997; Bolay 2006; Hucherzermeyer and Karan 2006). The conventional approach can be traced to colonialism and to the British colonies' legal system which is based on English Common law (Rakodi 1997; Scott 1998; Watson 2006). The high modernism in planning is also manifested through urban development plans and land reform. State led reform is also implemented by the administrative branches through bureaucratic modalities and their strategies (Sikor and Muller 2009) and such reform and plans usually lack the support of the targeted communities.

3.3 Reconsideration of the challenge

As acknowledged by the Slum Clearance Study, a complicating factor in the process of addressing informal settlements was the fact that different components of urban land administration were

under the custody of separate government ministries. Town councils and regional administration were governed by the Ministry of Local Administration, low cost housing came under the Ministry of Interior, Physical planning and Land Valuation was controlled by the Ministry of Natural Resources and Energy whilst roads and water and sewerage fell under the Ministry of Public Works. In addition to the growing urbanisation and development of informal settlements, national disasters – such as the cholera outbreak in 1983 at Msunduzi informal settlement – drew the government’s attention to the challenge of informal settlements (Lowsby and De Groot 2007; key informants 2010). This outbreak prompted the Swazi government to provide communal stand pipes and also to aggressively consider the provision of better housing and services in informal settlements. The 1984 Cyclone Domoina, which destroyed the country’s infrastructure and people’s houses, hit the substandard houses in informal settlements hardest. This also helped the Swaziland Government realise the need to tackle these challenges. The Government of Swaziland approached international organisations for assistance. These included the World Bank, USAID, UNDP, the German State Development Bank and the Overseas Development Administration; and these engaged in a joint effort with the Government of Swaziland to address the challenges that resulted, ultimately, in the commencement of legislative reform in order to address urban slums (Lowsby and De Groot 2007). New legislation and policy formulated as a foundation for the development of housing in Swazi urban areas included:

- a draft National Housing Policy 1987 which put priority on the need to provide sites and services to low income housing in the Manzini and Mbabane corridor (Lowsby and De Groot 2007);
- a Human Settlement Authority Act that provided for the establishment of the Human Settlement Authority;
- a Resettlement and Compensation Policy which guides the resettlement and compensation of individuals affected by projects;
- a Plot Allocation Policy that provided rules and criteria that would guide the plot allocation process;
- a National Housing Board Act that set up the Swaziland National Housing Board to act as a parastatal organisation implementing development initiatives. The National Housing Board had the conflicting objectives of provision of low income housing and generating a good financial return; (for a comprehensive list of policy and legislative reform undertaken under the SUDP (see Appendix 1).

3.4 The World Bank's involvement

A loan agreement between the Government of Swaziland and the International Bank for Reconstruction (World Bank) was signed on 28 July 1995 (Loan Agreement 1995). The Swaziland government loaned a total amount of US\$29 million. According to the deliberations between the two parties, the Government of Swaziland was meant to contribute US\$21.3 million to the SUDP bringing the total funding available for the project to US\$51.5 million. However, as indicated in Table 3.1 below, by 2005, the Swazi government had contributed US\$34.086 million, far more than had been budgeted for (Lowsby and De Groot 2007). The findings of this study reveal that the interaction that took place between the traditional and urban authorities, over the issue of authority, delayed the project implementation by a decade and contributed to the increase in the budgeted project costs. Furthermore, this interaction resulted in change to the infrastructure design; for instance, in Moneni minimum infrastructure standards were rejected; hence, resulting in cost overruns (discussed in detail in Chapter Five). The Final Report on SUDP Evaluation (p.33) sums up the above mentioned factors this way:

While the time factor and inflation did contribute to the costs escalation closer analysis reveals that in the case of the sewerage sub-component the major cause was redesign of the STPs (sewerage treatment plants) to higher technological specifications.

Table 3.1: SUDP costs and funding by component (in US\$m)

Component	Approximate Government funding	IBRD Loan Disbursements	Approximate Project Costs	Total
Policy and Institutional Reform	0.05	3.85	3.90	
Rehab and Expansion of City Roads and Services	5.30	3.60	8.90	
Rehab and Expansion of water Sewerage Services	20.40	18.90	39.30	
Residential Housing Sites and Onsite Infrastructure	7.93	0.87	9.80	
Project Implementation Assistance	-0.26	1.76	1.50	
Totals	34.40	29.00	63.40	

Source: Lowsby and De Groot 2007

The loan agreement document reveals that it is the Government of Swaziland which approached the Bank for the loan. The clause reads:

(B) the Borrower having satisfied itself as to the feasibility and priority of the project described in schedule 2 to this agreement, has requested the Bank to assist in the financing of the Project

Agencies that are cited in the loan agreement as beneficiaries of the loan are the Manzini City Council, Mbabane City Council, Swaziland National Housing Board, Swaziland Water Services Corporation and Swaziland and Electricity Board (Loan Agreement 1995).

The closing date for the loan as stipulated in the loan agreement was 31 March 2002. The assumption underlying this date was that the urban development project would be completed by 2002. This assumption was challenged during project implementation, as many unforeseen events took place, this will be discussed in the next chapters.

Conditions of the loan as stated in the loan agreement include the following:

A. The Borrower had to ensure that the Project complied with the resettlement and compensation policy of 1994, the formulation of which was based on the World Bank Operational Directive 4.30 on Involuntary resettlement. This operational directive 4.30 carries the following considerations:

- involuntary resettlement needs to be minimised;
- where engineering and planning designs requires resettlement a resettlement plan has to be prepared;
- community involvement in planning and implementation of resettlement should be encouraged;
- displaced persons should be integrated in host communities; and,
- compensation for all assets including land, housing, and infrastructure and other assets should be paid and lack of title should not deprive a resettler of compensation.
- Vulnerable groups such as household headed by females must be included in resettlement plan.

The Bank's operational directive specifies that customary and formal rights of tenure should be given equal treatment in devising compensation rules and procedures. Usufruct systems governed by locally-recognised allocation mechanisms should be taken into consideration in resettlement plans. It

did not, however, specify that traditional leaders should be granted any formal recognition within the SUDP.

B. The Government of Swaziland with the implementing agencies, namely Manzini and Mbabane City Council, had to adopt an Urban Government Policy Framework by 1 February 1995.

Conditions stipulated by the Bank for a subsidiary loan agreement with Manzini City Council, Mbabane City Council, Swaziland Water and Services Corporation and Swaziland National Housing Board signed on 28 July 1995, include the following:

- the enactment of a new Rating Act satisfactory to the Bank;
- the availability of a lease agreement for Swazi Nation Land and satisfactory to the Bank; and,
- the appointment of qualified and experienced staff for the Technical Service Unit and the Project Coordination Unit which are under the Ministry of Housing and Urban Development and coordinators of the Urban Development Project.

The Bank emphasises that these conditions have to be met and be satisfactory to the Bank which presupposes that the borrower state needs to appease the Bank to get the loan. The conditions dictated by the Bank suggest that Swaziland, as is the case for other developing or under-developed states, may be coerced to adopt policies they would not otherwise adopt (Finnemore 2004). On 13 December 1995 the Government of Swaziland and the agencies involved signed a subsidiary agreement. The government granted the agencies a five year grace period on repayment of the principal loan and they had to comply with the conditions of the loan as set out in the agreement.

3.5 The Swaziland Urban Development Project

In 1988, a decade after the Slum Clearance Study, the Ministry of Natural Resources and Energy conducted another study on Low income Housing in Swaziland, which specified the living conditions of low-income areas and informal settlements (Hoek-Smit 1988). This came after the realisation that efforts by the government to provide low-cost housing to industrial workers had failed to match the demand for housing and, as such, informal areas had continued to grow at an alarming rate. It proved that – as witnessed elsewhere in the developing countries – the capacity of national and local authorities to provide urban services was outpaced by urban growth and that these government authorities were ill-equipped to provide the services (Smith 1986; Gilbert and Gugler 1992; Devas and Rakodi 1993; Rakodi 1997; Payne

2002; Champion et al 2004; Todaro 2007). The Industrial Housing Company, a Swaziland government-owned development company established in 1972, was not only operating at a loss and in debt but had built a meagre 1200 houses by 1987. These houses which were meant to benefit low income groups tended to be less accessible to the target group (Hoek-Smit 1988); which implies that the middle class were the greatest beneficiaries. A key stated reason for the public sector housing projects' failure is the exclusion of income surveys resulting in provision of standard of services and costs of the project which are too high and unaffordable to low income group (MHUD Report to UN-HABITAT 1996). With regard to such public housing projects, Turner (1976) also observed that they were a costly exercise; hence, few houses were built and the benefits were captured by the middle and upper class.

Baseline information for the SUDP came from the 1988 survey on low income housing and informal settlements conducted by Hoek-Smit (1988). Subsequent to the formulation of the above-mentioned policies, the Swaziland government embarked on a feasibility study for the SUDP (Final Report SUDP Evaluation 2008). Two seminal workshops were held with representatives from international organisations, government ministries, members of the private sector and representatives of traditional leaders from informal settlements, to look at issues of urbanisation (Lowsby²⁵ and De Groot²⁶ 2007). Also included in these preparatory workshops were representatives of traditional leaders from informal settlements.

The establishment of the Ministry of Housing and Urban Development (MHUD) in 1991 was an outcome of these consultative forums. The Ministry sought to coordinate sectoral policy reform to enable the delivery of sustainable and equitable housing and urban development systems and processes (Statement of Sectoral Policy 1993) and drove the SUDP forward. The 'baby' ministry conducted a feasibility study as a first phase of the SUDP, which examined the conditions of the primary infrastructure systems in Manzini and Mbabane cities, assessed investment opportunities, identified sites that could be developed and engaged in institutional assessment. The study also looked into the possibilities for new and upgraded residential sites and prepared proposals for site-specific development. In Mbabane, sites identified included Nkwalini, Msunduza, Mahwalala and Mangwaneni. In Manzini, areas proposed were Moneni, Nhlabeni, Lwandle, KaKhoza, Sicelwini, Kwaluseni Mhleleni and Logoba. Based on this study, the following pilot project areas were selected: Moneni and Mhobodleni in Manzini and Msunduza,

²⁵ John Lowsby is an Engineering Consultant who was part of the Bank Project Preparation and implementation team.

²⁶ David De Groot is an Urban Development Advisor who was part of the World Bank team involved in the SUDP.

Nkwalini, Zone 6 and Mahwalala in Mbabane. The development of the other areas was deferred for later stages (Ministry of Housing and Urban Development 1993).

3.6 Project design

The SUDP was designed to be a comprehensive and integrated project and to be very labour intensive. This was in order to reduce costs and provide employment opportunities for the affected residents (MHUD 1992). The project was also undertaken within a framework of institutional capacity building, community participation and development, environmental evaluation and mitigation and financial monitoring and management (MHUD 1993).

The project had four primary aims:

- to raise environmental health standards among urban low-income opportunities.
- to mobilise community resources and encourage participation in development.
- to promote investment in urban employment opportunities.
- to improve the efficiency and equity of urban management.

The first aim – to improve environmental health standards – stemmed out of a concern about the annual urban growth rate in Manzini and Mbabane which stood at 5-6 per cent throughout the eighties and into early nineties (Population Census 1987). It also stemmed from municipalities' and government's inability to provide low income housing to cater for the rapidly increasing urban population. This was especially the case with new immigrants who were looking for job opportunities or other sources of income. The economic sanctions imposed in 1986, on South Africa led to an increase in foreign investment in Swaziland and the subsequent creation of many jobs (Miles-Mafafo 2001), resulting in population disbursement from the different regions to Matsapha industrial estate.²⁷ This industrial site largely promoted urbanisation in Swaziland (World Bank 2002); as a total of 130 companies had been established and over 9000 people were employed (De Groot 1989), the problem of the low income housing shortage became more obvious and manifested itself through the mushrooming of more unplanned settlements. In Mbabane, an estimated 22,000 people lived in informal settlements within the

²⁷ Matsapha Industrial site is the largest industrial site in the country, located in Matsapha town, close to Manzini city (8km away). The site started developing in the early 1960s through the 1980's when the country experienced quick economic growth, discussed in Chapter Two of the thesis (MuzVidziwa and Zamberia 2006).

Mbabane Municipal jurisdiction (De Groot 1989). Housing provided by the Swaziland Industrial Company and subsequently by the Swaziland National Housing Board, such as Mobeni flats, was intended to benefit the low income class, but ended up being used by the middle and high income class because of their high rental cost (Miles-Mafafo 2001). This could be attributed to the conflicting responsibilities of the Swaziland National Housing Board, which as mentioned above are the provision of low income housing and financial viability (Lowsby and De Groot 2007). The failure of the project to reach the targeted group makes the self help approach to housing seem a better option to addressing housing needs for the low income group as ‘only when housing is determined by households and local institutions and the enterprises that they control can the requisite variety in dwelling environments be achieved’ (Tuner 1976: 102). In most developing countries, due to the lack of affordable housing, migrants who came to the cities in search of income opportunities used any means of accessing land and housing and in this situation, settling in informal settlements becomes the most common practice as it is affordable. For this reason, Huchezermeyer and Alan (2006) notes that informal settlements are a perpetual challenge. Most migrants build substandard housing which lasts at least for the first few years when they are still establishing themselves. As Lieberherr-Gardiol (2006: 276) argues ‘for the sake of survival they settle at almost any cost in the shadow of the big city which has done nothing to prepare for their arrival’.

The informal settlements of Swaziland do not have adequate basic infrastructure such as a clean water supply, good sanitation facilities, proper access roads, drainage and solid waste disposal facilities (De Groot 1989; Manzini City Council 2003; World Bank 2002; Muzvidziwa and Zamberia 2006). The level of infrastructure and services in informal settlements is much lower than that provided in formal housing areas (Hoek-Smit 1988) (see Appendix 2). The lack of services and infrastructure has led to poor environmental conditions, which adversely impacts the residents and neighbouring formal townships. Based on these challenges, the SUDP sought to provide improved roads, access to clean water, upgraded sanitation and waste removal facilities.

The SUDP’s second aim – to mobilise community resources and encourage participation in development – stemmed from its desire to learn from the international experiences of slum upgrading. The past failures of urban housing projects led to the realisation that citizen involvement in development projects is an important factor in the social acceptability of the project and also results in designing standards that suit the needs of the people. The SUDP also recognised the need for decentralisation in urban development, which is what scholars (Mabogunje 1991; Kombe and Kreibich 2000; Toulmin and Quan 2000; Rakodi 2001) propose. To encourage community participation, the SUDP sought to identify local community skills and to provide residents with employment opportunities. The project outreach

facilitators²⁸ from the affected communities were encouraged to facilitate a two-way flow of information between the residents and the developer who in the case of Manzini was the Swaziland National Housing Board. This state of affairs continued until 2002 when the project was handed over to Manzini City Council.

The SUDP would fulfil its third aim of promoting investment in urban employment through the construction of basic infrastructure: if moderately labour intensive, this would involve a 40 per cent labour component, thus it was believed that the SUDP would generate new employment opportunities (MHUD Technical Report 1993). It had been estimated that E1 million (one million Emalangeni) invested in infrastructure could be expected to generate 600 construction jobs. The expectation was that this would generate 2000 jobs in the construction sector and an additional 4000 jobs through multiplier effects (MHUD 1993). It would provide city wide infrastructure and residential upgrading, with the former including the expansion of water treatment plants, pumping facilities, new sewage treatment facilities and major road improvements in the cities of Manzini and Mbabane (World Bank 2002). Residential upgrading would be carried out in four informal settlements of Manzini and Mbabane including the informal settlement of Moneni.

The institutions such as city councils and the Ministry of Housing and Urban Development involved in the SUDP project were newly established, ill-equipped or short-staffed as well as under-resourced (De Groot 1989). This, in conjunction with awareness of the failings of earlier approaches such as public housing, self-help projects and site and services projects, had led to a focus on capacity building and institutional strengthening (UMP 1994; Werna 1995). The newly-formed Swaziland institutions needed greater capacity and to be in a better position to implement the urban development project. The SUDP therefore had to provide training for the staff, create some new positions and also encourage institutions, including the relevant municipalities, to fill their vacant positions. For instance, the Municipal Council of Manzini had to engage a Town Clerk and a City Treasurer, as these positions were unoccupied. The World Bank provided professional support through experienced technical and financial advisors. The advisors would come for a specific time period, normally at different intervals as work warranted, to help with formulation of policies and guidelines, training and other project issues. The World Bank nurtured the view that municipal finance, healthy urban environments, job creation, and

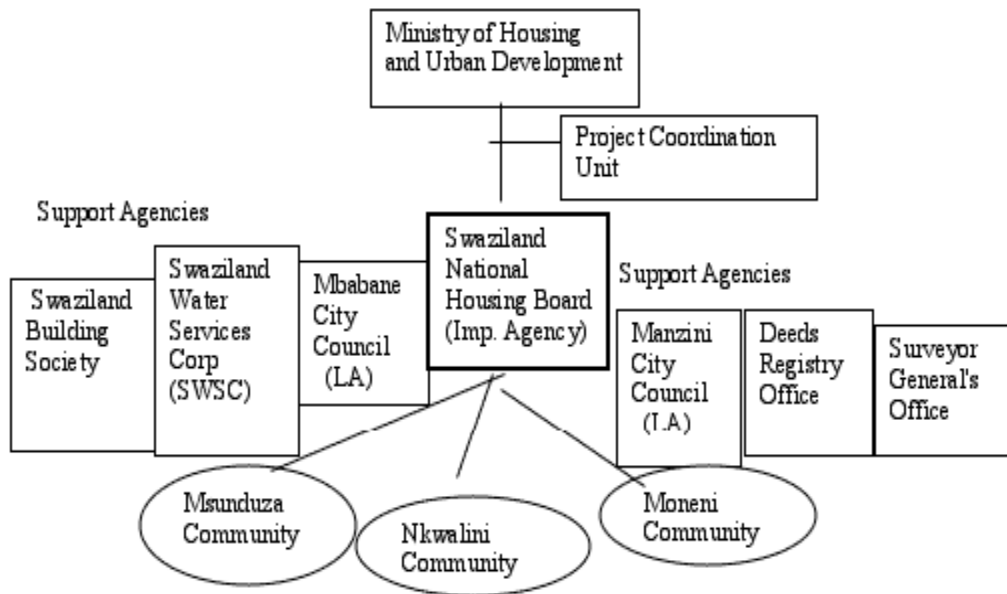
²⁸ Residents from project area had to help in disseminating information and educational exercises.

poverty reduction would have a considerable impact on the ability of cities to manage the needs of the urban poor (Mehta and Dastur 2008).

3.7 Components of the SUDP

The SUDP was supposed to be implemented in partnership with different agencies, such as the Manzini City Council, Mbabane City Council, Swaziland Water Services Corporation (SWSC), Swaziland National Housing Board (SNHB) and Swaziland Electricity Board (SEB). As indicated in Figure 3.1, these activities were all overseen by the Ministry of Housing and Urban Development, which established a Project Co-ordination Unit in 1993 to lead preparations, loan negotiations and implementation (key informants; Lowsby and De Groot 2007). The original plan for the implementation of the SUDP positioned the support agencies in closely working relationship with the communities and the MHUD, along with a Project Co-ordination Unit. This plan was not, however, maintained throughout the SUDP and this is explored in Chapters Four and Five. In particular, this arrangement made no provision for traditional leaders and the role of chiefs and princes in informal settlements. As discussed in Chapters Four, Five and Six, the interactions between urban authorities (as indicated here in the support agencies and the MHUD) and the traditional leaders had a substantive impact both on the process of implementation and on the final outcome of the SUDP.

Figure 3.1: Institutional linkages for upgrading schemes



Source: World Bank 2002

A Project Steering Committee, composed of representatives from all the implementing agencies and chaired by the MHUD, was formed to serve as a forum where all the various agencies indicated in the diagram could discuss project progress and help one another address challenges faced in the process of implementing the project. This committee met once every month until 2005 when the World Bank loan was officially closed, meaning the Swaziland of Government would have to fund any pending projects such as Moneni, which had not been implemented at the time.

The SUDP's aims were to be met through four planned components, namely: the expansion and rehabilitation of the city wide infrastructure, the residential upgrading of cities in Mbabane and Manzini, policy and legislative reform and finally, institutional strengthening and capacity building. Two of these components, namely, residential upgrading and policy and legislative reform involved complicated negotiations between different actors.

1. **Expansion and Rehabilitation of the City Wide Infrastructure:** This included the rehabilitation and upgrading of roads, water treatment, sewerage treatment and reticulation, solid waste collection and disposal. The increasing traffic volumes and poor conditions of the roads in both cities necessitated their rehabilitation and upgrading. The increasing urban population and the low capacity of existing sewerage ponds warranted the institutions' attention. This project

component is linked to the objective of improving urban environmental conditions, including those in low income areas such as Moneni and Msunduzi. From a development perspective, the municipal councils of Manzini and Mbabane also thought that the provision of infrastructure would facilitate the accelerating of economic growth and development. The extent to which the infrastructure would benefit residents of informal settlements was less clear.

2. The second component **was residential upgrading in the cities of Manzini and Mbabane** which would be carried out in the informal settlements of Msunduzi, Mahwalala and Nkwalini in Mbabane and Moneni and Mhobodleni in Manzini. The SUDP planned to provide access to roads to approximately 5072 informal homesteads using bitumen sealed roads, accompanied by foot paths and drainages, bulk water supply and electricity, sewer line and plots to the residents (MHUD 1993). The rationale, as mentioned above, was aimed at improving the living standards of the informal settlements. As shown in the earlier studies, these areas were occupied by 60 per cent of the urban population and had squalid living conditions (Hoek-Smit 1988; MHUD 1993; World Bank 2002).

This second component is in tune with the World Bank's 'sites and services' programme initiated in the 1970s, which placed emphasis on the provision of a minimal level of infrastructure. The premise underlying this provision was that once people had title to the land, they would be willing to invest in improving their houses. Elsewhere in developing countries, upgrading projects (like the SUDP) were preceded in the 1980s by the emergence of the Urban Management Approach, which got supported through the Urban Management Programme jointly coordinated by the World Bank, the United Nations Centre for Human Settlements and the United Nations Development Programme (McAuslin 1992; Devas and Rakodi 1993; Werna 1995). The above mentioned premise – that formal title to land will encourage people to invest in their housing – has continued to influence national policy in Swaziland.

This premise also influenced the SUDP and a very crucial aspect of the residential upgrading component is the provision of plots to the 3678 households in the affected informal settlements of Manzini and Mbabane cities. A tenure system deemed to be appropriate for the SUDP was the 99-year lease; hence the Ministry of Housing and Urban Development sought the King's consent to release the land. This new form of tenure would replace the traditional arrangements of acquiring land in the informal settlements and would provide residents with security of tenure. This formalisation of tenure was considered desirable by the MHUD, as informal residents had previously accessed land through traditional leaders who were now considered unofficial since

the land had been rezoned as urban, and hence government-owned. Security of tenure, as established through the 99-year lease titling, was seen as a motivational factor promoting people's investment in their houses. Clearly, the change of tenure was a result of the World Bank involvement in the SUDP as a co-financier. The Bank was influenced by those scholars who viewed traditional tenure as an impediment to investment (Hardin 1968; Rakodi 1988; Payne 1984) and therefore engaged in promoting titling in its programmes with the notion that these enabling markets would increase investment. Hernando Desoto, for example, promoted titling arguing that a key to unlocking the capital potential of assets that are informally owned by the poor is formalising property rights (Desoto 2000). This type of argument found favour with development agencies such as the World Bank and USAID (Nyamu-Musembi 2006: 7). Certainly, the bank was also influenced by the realisation that other housing schemes had failed due to unresolved tenure problems and the lack of clarity over responsibility for infrastructure provision and new housing schemes (Miles 2001). Land distribution under the 99-year lease, coupled with in-situ upgrading, was considered to be affordable to low income residents who would have to pay for the cost of service provision but not for the cost of land. Consequently, the principle of cost recovery was viewed as practical and achievable.

3. **Policy and Legislative Reform** is the third important component of the SUDP. A review of current legislation, drafting of enabling legislation, and the formulation of policies required in order to make the project a success and to bring about what was considered to be proper urban governance. This is the area which demonstrates the power of international organisations such as the World Bank in shaping development interventions. In its capacity as a Financier, the World Bank has a significant influence on housing policies through conditionalities, policies and practices on loan agreements (Pugh 1994). At the start of the SUDP, the Bank facilitated studies which made recommendations on a number of legislation and policies deemed necessary for successful implementation of the project. These included the peri-urban policy, the introduction of the 99-year lease, drafting a land policy, introducing the National Housing Act and Human Settlement Authority, and reviewing the resettlement policy and allocations policy. This review of the resettlement and allocation policies was critical as they

conflicted with the existing National Housing Policy. In addition, the Rating Act²⁹ was reviewed, a plot policy allowing women to access urban land was put in place (discussed in detail in Chapter Five) and a fiscal transfer policy to improve municipal fiscal health was introduced.

4. The final component of the project was that of **institutional strengthening and capacity building**. The objective was to strengthen the economic capacity of cities while improving the standards of living for the residents (MHUD 1993). In adherence to this, the World Bank prioritises institutional strengthening as a way of facilitating urban sustainability and alleviating poverty. The realisation that the implementing agencies were either understaffed or lacked the necessary expertise prompted the Bank to encourage capacity building or the strengthening of institutions. This was necessary because the bank intended to get the project implemented by existing institutions.

3.8 Core pillars of the SUDP

Preparations for the SUDP included consultations with a number of stakeholders. Workshops had to be held with different stakeholders and working groups formed to ‘develop policies and processes, appropriate planning and engineering regulations and standards for upgrading’ (Lowsby and De Groot 2007: 27). The involvement of the informal settlement communities was seen as crucial to the project’s acceptance; hence the Ministry of Housing and Development was to facilitate mass community meetings to discuss project issues. The consultant’s project preparation report noted that ‘community participation is essential to ensure the social acceptability of the project’ (SUDP Technical Report 1993). This was even more necessary because the SUDP insitu-upgrading component was a pilot project involving many communities and therefore diverged from previous project principles. This was possible because, although the land was government-owned, both the Ministry of Housing and Urban Development and the Manzini City Council had been lax in effecting town planning standards since Moneni’s incorporation into the urban boundary - traditional leaders and structures that had been managing the land. Therefore, there was a need to clarify their expected role and status under the ‘new land administration system. In the process of preparing for the SUDP the Ministry in consultation with the City Council (mainly)

²⁹ Local government legislation that confers powers on urban local authorities to charge property tax on rateable properties within the gazetted urban area.

developed new policies and guidelines also guided by the World Bank loan conditions. In this study I refer to the fundamental principles that were introduced under the SUDP as ‘core pillars’. These ‘core pillars’, were unique to the SUDP, namely; the 99-year lease, plot allocation criteria, resettlement policy and guidelines, cost recovery and town planning standards (grade II residential district). Each of the core pillars will be examined in detail to show what they were designed to achieve and how, but not what ultimately transpired as that will be explored in detail in the chapters, which follow.

Core pillar 1: The 99-year lease

The 99-year lease is a nexus of the study in that its introduction in the informal settlements triggered the tensions between the traditional leaders and urban authorities (MHUD 1993; Muzvidziwa and Zamberia 2006) and subsequent interactions which this study argues impact on the development of the residents. For this reason and as a foundation for subsequent chapters, I describe in detail what the 99-year lease involved and the benefits that the government anticipated it would bring about. In essence, the introduction of the 99-year lease was believed to present a dual function of retention of government-owned land while affording security of tenure to residents.

The Ministry of Housing and Urban Development views the 99-year lease as a form of tenure that introduces some flexibility to customary tenure and as a necessary measure to meet the present economic and planning developmental needs. The conversion of government-owned land or Swazi Nation Land required the consent of the King. He in turn decided to lease the land to the Ministry of Housing and Urban Development. As the formal manager of this land, the MHUD administered the distribution of the land under the 99-year lease agreement to the beneficiaries. The lease agreement included: a description of the lessor and the lessee, description of the leased property and a clause explaining the change of ‘ownership’ of the plot’, duration of the lease and plot price (MHUD 2004). A key factor of the lease is that should the lessee die, the remaining years of the lease can be inherited by an heir. A renewal of the lease has to be applied for at its expiry, which can be granted at the pleasure of the lessor. Furthermore, transfer of the lease to a different person can occur at the discretion of the Ministry of Housing and Urban Development. The rationale behind the proposed issuance of the 99-year lease was to improve opportunities for the residents of the informal settlements to access loans from financial institutions (achieved by using the lease title as collateral) and also to improve their security and in so doing allow them to develop their plots (MHUD 1993; Lowsby and De Groot 2007; key informants 2009). A booklet on the

concept of 99-year lease prepared by the Ministry of Housing and Urban Development (1999) listed the following advantages of the lease:

- a) It will lead to better investment in land by way of developing it.
- b) Enable the holder to use land, categorised as Swazi National Land, as collateral for loans from financial institutions.
- c) Give the holder a sense of belonging and attachment to the land and empower them to make improvements that suit their needs.
- d) There will be clearly defined land uses and easy administration.
- e) Enable the title holder to have autonomy over property usage.

The 99-year lease discriminates against foreigners in that they cannot be granted title even if their spouses are Swazi; in the case of a married couple where the foreigner is male, the land is allocated to the wife.

Core pillar 2: Plot allocation policy and criteria

The Ministry of Housing and Urban Development prepared an Allocation Policy to guide the plot allocation process in the urban development project areas and subsequently developed an Allocation Criteria and Procedure. The policy stipulated the composition of the Plot Allocation Committee, including that it be chaired by the Ministry of Housing and Urban Development with the secretariat resting with the developer (namely the Swaziland National Housing Board or the relevant City Councils). Each Allocation Committee assigned to a project area included representatives of the community. The assumption was that these representatives knew the residents of the informal settlements. Their involvement was considered crucial because the urban development project was meant to benefit the existing residents, because concepts of participatory development were being practiced in order to enhance the quality of development, and because it was a means to ensure transparency.

A plot allocation procedure was drawn up through what Lowsby and De Groot (2007) consider to be a consultative forum. The findings of this study though show that community representation in the workshops was quite inadequate and this will be critiqued in Chapter Five under community involvement. The plot allocation procedures stipulated how the plots in the project area would be allocated and also detailing how different household beneficiaries would be given priority in the allocation process. The plot allocation procedure was also intended to clarify land tenure

related problems (MHUD Report to UN-HABITAT II 1996). The procedures focused on the following:

Who will allocate the plots?

What is the process for the allocation of plots?

What are the priority groups?

What information do residents need to gather for the application?

What will happen to residents who cannot afford their plots?

A clear explanation of the plot allocation process was necessary to get affected communities to understand, appreciate and know their role in the whole process. The plot allocation process was based on a census of all households in the areas, conducted during the planning stages of the SUDP and eligibility was determined by the allocation criteria (see Appendix 7 for the plot allocation criteria). The plot allocation was intended to be carried out in three phases namely primary, secondary and supplementary allocations. The primary plot allocation entailed the allocation of plots to heads of household who had secured the right to settle either 'through *khonta* or occupancy permit or permission of the Libandla/community Council and can afford the plot price' (SUDP Factsheet 1994: priority group 1). In a case where the head of a household had passed away, his or her heir would be allocated the plot. The secondary stage of allocations covered heads of households who had to resettle either because they are affected by the proposed infrastructure or other environmental factors. Supplementary allocations included other priority groups such as the adult children of household heads, a second wife of the head of a household and tenants living in the project area. According to the plan, in these primary plot allocations, people received 99-year leases for land that they already occupied, hence it was an in-situ upgrading project. Nevertheless, boundaries could be altered to accommodate other residents or infrastructure. In addition, the project also aimed at minimising involuntary resettlement as per the World Bank Operational Directive 4.30 which governs resettlement within the Bank-funded projects. *It reads 'Involuntary resettlement should be avoided or minimized where feasible, exploring all viable alternative project design'* (The World Bank Operational Manual 1990: 1)

Core pillar 3: Resettlement policy and guidelines

Involuntary resettlement in the urban development project could not be completely avoided though there was intent to minimise it. Planning and engineering designs showed that certain households were to be affected by infrastructural developments and hence had to be resettled. The Ministry of Housing formulated a resettlement policy to guide the resettlement process. Resettlement guidelines were

also prepared for implementing agencies to comply with, and key objectives of the resettlement policy prepared in 1996 included the following:

- Minimisation of involuntary resettlement
- Preparation of resettlement plan where involuntary resettlement is inevitable
- Displaced persons' living standards restored and not made worse off
- Resettlement and compensation costs being considered legitimate costs
- Displaced persons compensated and provided with support during the transition.
- The displaced persons and existing social structures had to be involved in planning stages of the resettlement process.

According to the Policy Guidelines (MHUD 1996), a resettlement committee had to be formed. It would be comprised of representatives from the Ministry of Housing and Urban Development, City Council, Land Valuation office, Regional Administrator and the Resettlement Unit based in the Ministry of Agriculture and Cooperatives. The resettlement guidelines stipulate that compensation had to be at replacement costs and prior to the actual move. Compensation would be for immovable assets and crops or any other vegetation. With regard to any loss of farming and grazing land, the guidelines indicate that residents might lose their traditional rights. An avenue open for them was to approach the resettlement committee or Regional Administrator for establishment in another area.

Heads of households who had to resettle either because they are affected by the proposed SUDP infrastructure, clustered households or other environmental factors, were covered in the secondary stage of Allocations.

Core pillar 4: SUDP cost recovery principle

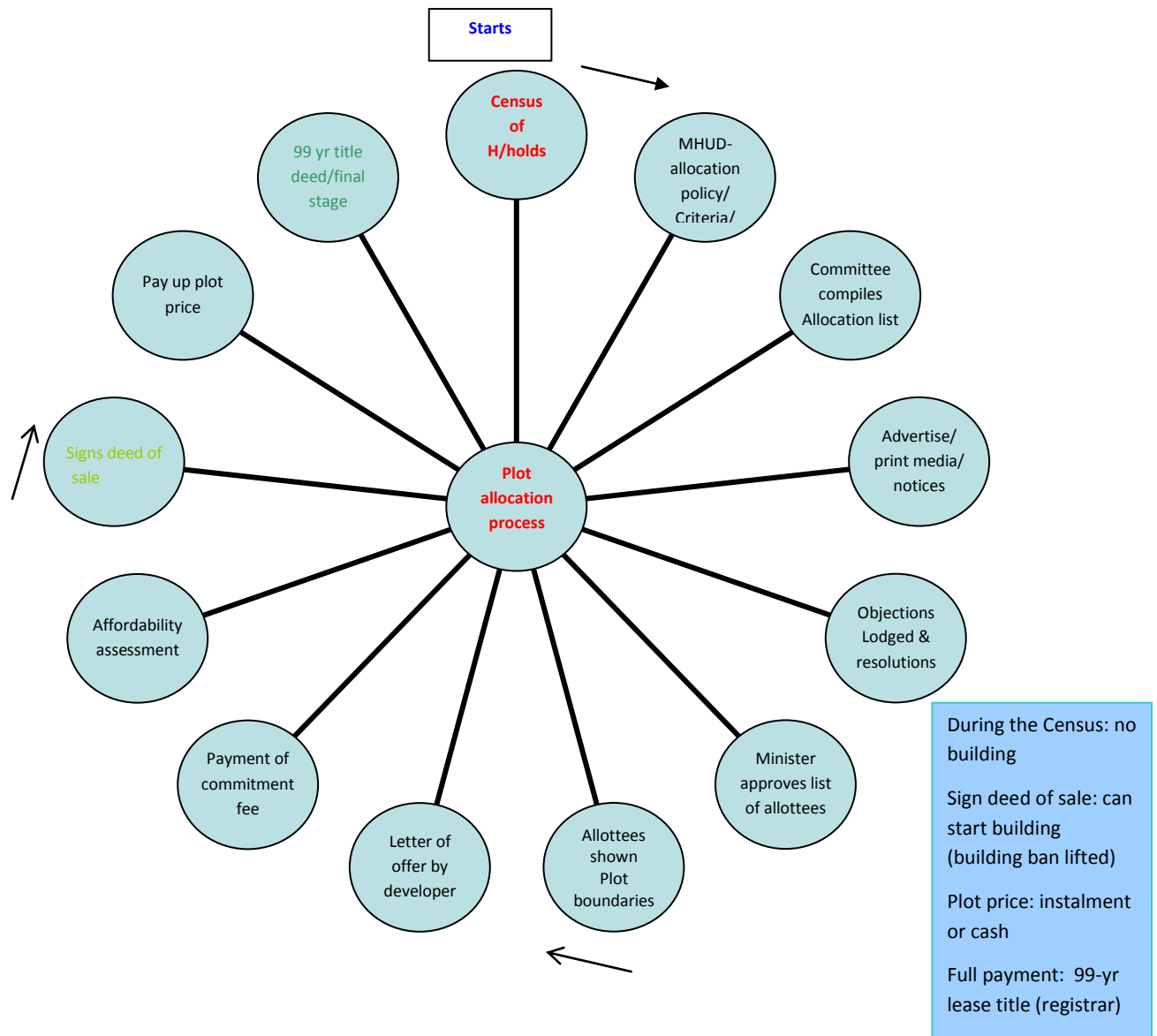
The SUDP was based on a cost recovery principle which would be made possible through sales of newly serviced plots in the project areas. The idea was to use the revenue from plot sales to service new upgrading projects: 'Plot price is the price payable, which is the base cost plus any additional services (yard tap, power connection etc)' (SUDP Plot Pricing Policy and Mechanism 1994: no page number). Plot beneficiaries were expected to pay a commitment fee, deposit and make payment of the balance (Lowsby and De Groot 2007).

The figure below gives a picture of all the stages that, at the planning stage, were to be involved in the plot allocation and sales. The process was intended to be equitable, transparent and simple to understand. Therefore, once the allocation list had been compiled by the Allocations Committee, it had to be advertised to enable residents to see it and lodge their objections with the Ministry. Linked to the issue

of fairness was that the allocation criteria granted women eligibility to plots; fundamentally it decided that men and women had to have equal access to plot allocation (Allocation Criteria 1994). The need to address issues of women's access to plots was identified at the beginning of the project by the Government of Swaziland and the other international organisations such as the World Bank and those that provided technical support³⁰ such as ODA, UNDP, DFID, and USAID. This was necessitated in that 35.2 per cent of the country's households are female headed (Swaziland Population Census 1997) and yet the existing legal tenure systems put restrictions on women's access to land (see Chapter Six for detailed information). The Ministry of Housing and Urban Development had to form a Dispute Resolution Committee to address objections. Subsequent to the finalisation of the allocation list, a plot boundary exercise would be conducted to show residents their new plot boundaries. In order to secure a 99-year lease, a lessee had to pay at least 20 per cent of the plot price as well as a one-off commitment fee of E400 -00 (four hundred Emalangen) prior to the commencement of the sales process. The remaining stages, as indicated below in Figure 3.2, follow sequentially until the last stage which is registration of the plot in the lessee's name, with the Deed's Registrar. The issuance of title depended on the full payment of the 'plot price' (discussed below). The time frame given for the payment of the 'plot price' indicated in the project documents was initially three years and then later extended to five years.

³⁰ Technical support included advisory support to the implementing agencies' engineering departments, finance departments, environmental management, reviewing of land related legislation, provision of long term training to urban planners and a surveyor, training on project management and technical support to the Project Coordination Unit.

Figure 3.2: Stages involved in the plot allocation process



During the plot allocation and sales process, a person whose affordability status was rated positive by the affordability assessment could sign a deed of sale and the building ban could be lifted (see Chapter Five for more discussion on the building ban). He or she could then submit building plans for the City Council's scrutiny and thereafter start building. If she or he managed to pay off the plot price either through a loan or in instalments, the property was registered and the title issued. However, any person whose affordability status was negative was given the affordability options outlined below. According to

the policy, if a resident was unable to afford the development, the commitment deposit had to be refunded and he or she was then expected to leave the project area. This never happened and, when the fieldwork ended in May 2010, this had not happened in Moneni. Indeed, as discussed in more detail in the chapters which follow, the implementation of the plot allocation criteria and process was much harder than anticipated and it experienced numerous delays.

The principle of cost recovery enshrined in the SUDP meant that residents had to pay for the cost of providing the services. This came to be known as the 'plot price'. The World Bank loan was meant to be a revolving fund which could, as costs were recovered, be used to develop other informal settlements in the country. The Ministry of Housing and Urban Development conducted affordability studies to ascertain the economic status of the residents and to assess their affordability levels which would serve as a basis for setting the plot price. The studies included Hoek-Smit's studies on low-income housing in Swaziland (Hoek-Smit 1988) and on land and housing markets (Hoek-Smit 1989). These studies came to the conclusion that only 10-20 per cent of the affected residents could not afford the plot price and would need special access to options to enhance affordability (see appendix 4). The SUDP also used the National Income and Expenditure Survey 1985 to assess the socio-economic status of the residents in the project areas. Technical report 1 shows that the estimated median household income for all households in Manzini and Mbabane was E830 per month (approximately US\$75) and the project targeted the 60th to 20th household income percentiles. The Ministry of Housing and Urban Development devised strategies to enhance affordability, which included plot swapping, joint purchase, external assistance, subsidising poor residents through the sale of unallocated plots and community trusts. Although looking good on paper, as later chapters demonstrate, these options were generally not applied because of delays in the plot allocation process, strong resistance to the change of tenure and a widespread inability to pay these prices.

Core pillar 5: Town Planning Standards- Grade II Residential District

Another core pillar of the project was an amendment to the town planning standards, in particular, the introduction of the Grade II Residential District status. The SUDP prompted the Ministry of Housing and Urban Development, in consultation with other pertinent stakeholders such as urban local authorities, to prepare a physical development planning policy that would facilitate land use and development benefiting the people. Part of Section 12.3.4 of the physical development plan 1996-2006: 12-6 reads:

A very recent phenomena has been urban expansion which has resulted in the incorporation of Swazi Nation Land into designated urban areas in Manzini and

Mbabane. The proposed solution to the tenure problem thus posed, namely the conversion of title of these areas to long leasehold, protects the King's title to the land but undercuts chiefs' powers to allocate land.

The idea behind this was that the urban local authorities would prepare their town planning schemes to be in line with the national physical development plan. Furthermore, the development code which provides land use, control and specification was modified to meet the needs of low income settlements like the informal settlements. This culminated in the introduction of a new zone, which is a Grade II Residential District, a flexible zoning allowing for incremental improvement of houses and usage of traditional material. The MHUD reclassified the informal settlements into this zone which relaxes building codes thus enabling residents to build with traditional materials and to have ventilated pit latrines. The application of the flexible building standards would apply on relaxation of the building ban by the MHUD and once the plot allocation process had been completed. Little did the development planners anticipate that in Moneni this plan would be jeopardised by the traditional leaders' resistance to project implementation, in particular to the City Council's authority, which Chapter Four explores. Further, this facilitated a smaller urban plot, specifying that a minimum plot size allowed under the SUDP was reduced to 200 metre² for single detached dwellings and restrictions on the number of dwellings on a plot were removed. Although contrary to conventional urban standards, the emphasis was on determining a level of services affordable to and preferred by the residents rather than on very costly services. This was indeed a change in that previously urban residents were expected to build using only modern material and pit-latrines were not allowed. The Grade II residential district dictates that residents also had to comply with designated zones for different activities such as commercial areas, public purpose areas (communal areas) and residential areas. This suggests that any resident who needed to build had to seek the approval of the City Council which is contrary to the practice the residents were accustomed to. As shown in Chapter Five things did not work according to these plans. Rather, as suggested by Scott (1998: 139) who dismisses such a high modernist planning approach, the city is a social organism and that 'its interconnections are so complex and dimly understood that planning always risks unknowingly cutting into its living tissue, thereby damaging or killing vital social processes'.

3.9 Conclusion

The core pillars of the SUDP represent the Government of Swaziland's efforts to address the challenge of informal settlements through embracing in situ upgrading projects. In the process, the

Swaziland Government introduced many new development principles, including those of community participation and representation, gender equity and new forms of land title. Fundamental principles of the project, which make it different from any other project that the government of Swaziland had ever embarked upon, include the 99-year lease agreement, the plot allocation criteria, allowing women's access to plots, the resettlement plan and guidelines, the cost recovery principle and reviewal of some aspects of town planning standards. The implementation of these principles, although critical in their own right, was greatly affected by the contestation and interactions between both the traditional and urban authorities (see the chapters which follow). The World Bank – while emphasising the need to take cognisance of customary forms of tenure and usufruct systems of allocation – did not adopt any specific position on the role of traditional leaders. Swaziland's urban authorities – as the official powers in control of the SUDP and the newly gazetted informal settlement areas – assumed that their authority prevailed. However, changes in legislations did not mean that Chiefs and other traditional leaders relinquished their control over the informal settlements. Nor did it mean that communities automatically accepted the jurisdiction of the urban authorities, which they had just been introduced to and their involvement bringing cost implications. Instead, a complicated process of interaction – of recognition, compromise and legal wrangling – ensued in which both traditional and urban authorities sought to shore up their authority. The results of this interaction, as indicated in the following chapter, substantially delayed the implementation of the SUDP and the nature of the development which followed.

Chapter Four: Interaction pathways of traditional and urban authorities under the SUDP

Whereas legal imposition in the Third World and elsewhere weakened indigenous authority and radically altered the normative content of such key legal areas as the indigenous proprietary rules... normative imposition did not lead to wholesale suffocation of indigenous authority and legal values... On the contrary, the Swaziland case is a unique illustration of the relative triumph of indigenous authority and a substantial subordination and/or containment of alien legal norms—the indigenous authority was able to retain its control over land as a base of power, to control the post colonial state apparatus and subordinate the technocrats and acquisition of equity interest in the commanding heights of the Swaziland economy (Peter Takirambudde cited in Rose 1992: 39).

4.1 Introduction

In the informal settlements, the SUDP triggered numerous interactions between traditional and urban authorities emanating from the modernisation of land tenure, a process which created competition for control and authority. Both traditional and urban authorities administering the legal systems, customary law and statutory law and reporting to the same King as the ultimate authority, fought for their own version of development. The interaction was primarily between traditional leaders and urban authorities, the Manzini City Council and the MHUD representatives. During the lifetime of the SUDP, both sets of authorities invoked the King's name to put pressure on each other to conform and also to justify their authority over the informal settlements. Interaction dynamics occurred as a result of the different perceptions they had about the jurisdiction of the informal settlements. This chapter explores and analyses the dynamics that occurred in the informal settlements in Swaziland, in particular those on government-owned land. However, each informal settlement experienced a different level of interaction depending on the social status and influence that the traditional leaders had in the area. To examine these issues, I use the case of the informal settlement of Moneni in Manzini City. In contrast to the observation of Takirambudde (cited in Rose 1992) that traditional authorities tend to be more powerful than urban authorities and are thus more able to assert their claims to legitimacy, in the case of Moneni neither the traditional nor the urban authorities had triumphed. Instead, prolonged tension arose between the indigenous people and the authorities, which resulted in residents being kept in a state of limbo and not knowing who the rightful authority in the area was, thus, making them even more insecure than before the

implementation of the SUDP. The challenge presented by the dual land tenure system was metaphorically captured by one informant in this study, who argued, 'you cannot have two bulls in one kraal for they will fight'. On the one hand, the chapter will demonstrate the contestations that took place over the issue of authority and inconclusive negotiations that occurred even outside the statutory laws. On the other hand, it will show how the plurality of land tenure system and ambiguous legislations led to several competing legitimate claims (Lund 2008).

The co-existence of traditional and urban authorities in Africa's urban areas has been widely acknowledged by most writers on land tenure and development (Mabogunje 1992; Fekade 2000; Antwi 2002; Durand-Lasserve 2003; Hucherzermeyer and Karan 2006; Toulmin and Quan 2006). The failure of top-down management approaches to deal with informal settlements, while also demonstrating the flexible, contemporary and often socially legitimate nature of customary tenure systems is also highlighted as an issue. Ultimately, as Mabogunje (1992) argues, shortcomings in how traditional authority and tenure are conceptualised within development leads to a failure to recognise the socio-political dynamics. This failure to grasp whose authority counts and the nature of acceptance of institutional authority impacts negatively on the implementation of projects and on the urban poor. With regard to Swaziland's local government, Reddy (1999) observes that the relationships between the traditional and urban systems are not clear and thus there is complexity, which the analysis below will explore in-depth.

4.2 The co-existence of traditional and urban authorities

Swazis are known to have retained their customary practices more than neighbouring countries such as Botswana and Lesotho as explained by Rose (2002) in the opening quote. On the same note, the reluctance of the traditional authorities to relinquish control over areas they believe to be under their jurisdiction is not a new phenomenon in Swaziland as it happens even in rural chiefdoms (Crush 1964; Matsebula 1976; Rose 1992). The difference concerning the informal areas situated in urban areas is that statutory tenure also exists, hence plural tenure systems coexist. As is the case in many developing countries, this is the result of the intersection of European and indigenous laws in colonial and post colonial societies (Moore 1986; Wilson 1997; Delville 1998). According to Delville (1998), colonial states sought to break the power of customary authorities in French speaking regions and replace them with state management whereas in English speaking Africa customary authorities were permitted to exercise part of their authority through indirect rule. The colonial authorities ruled through the traditional institutions such as chiefs and their councils, the native court system, and where these were non-existent

they created them (Reddy 1999). This explains why Swaziland, a former British protectorate, has a land tenure system that is dualistic in nature. Within both the formal and informal systems the state remains the ultimate mediator, adjudicator and power holder. Literature on Swaziland's land tenure points to the simultaneous existence of the customary and statutory laws, the former according authority to traditional leaders whilst the latter mandates urban authorities (Kuper 1963; Matsebula 1976; Rose 1992; Levin 1997; Mushala 1998). These two sets of authorities usually carry a web of contradicting perceptions about development and jurisdiction of the informal settlements (Forster and Nsibande 2000; Huchzermeyer and Karam 2006). With regard to the urban areas, perceptions of the traditional authorities in the informal settlements can be traced back to the historic factors that led to them settling in the area (explained in Chapter Two and discussed further below), and the way the government treated them. In spite of incorporation into the urban area in 1979, the traditional leaders continued to administer these informal areas. Informants told me that no formal discussion was held with the traditional leaders, to explain to them their new role and expectations under urban status.

In Swaziland and in Africa more generally, customary tenure systems are managed by chiefs and traditional leaders and based on un-codified law, local norms and practices (Basset and Crummey 1993; Platteau 1996; Cotula et al 2004; Moyo 2008). Customary and statutory land tenure systems should not be seen as absolutely opposed to each other but as competing forms of institutionalism characterised by mutual imbrications (Peters 2004). The notion of what constitutes formality and informality is socially constructed, and actors move freely between the zones (Jenkins 2001; Peters 2004). With regard to the challenges faced in the informal areas of Swaziland, the general view is that they are caused by the coexistence of the land tenure systems which leads to involvement of different authorities in land administration (Mabogunje 1992; MHUD 1993; Forster and Nsibande 2000; UN-HABITAT 2003; MHUD 2008). Similar to the situation of Swaziland is that in West Africa where an 'unspoken fundamental question is that of the relationship between the power of the state and that of customary authorities' (Delville 1998: 1). In Swaziland this question is even more pertinent in the urban areas, in that urban boundaries in Manzini and Mbabane have had to be expanded many times to accommodate urban population growth. Consequently, areas which have been run by the traditional leadership as Swazi Nation Land have been declared urban areas. In theory, but not always in practice, this should mean that a different authority – such as urban local authorities and the MHUD – take over. As a result, the jurisdiction that traditional leaders had over the area before its incorporation into the urban boundary has been interfered with, which causes disgruntlement and intense resistance from the traditional leaders (MHUD 1992; Manzini City Council 2004; Poverty Reduction Strategy 2006). Contesting accounts of authority over property are not, as Fortman (1995) emphasises, unusual and the following account tells

how the informal settlement of Moneni found itself within the urban boundary, as explained by the Prince of Moneni.

Before settling in the Moneni area, the Moneni Royal Kraal (umphakatsi)³¹ had had to move more than three times due to urban expansion. Prince Mshoshi I, a son of Mswati II, initially had his Royal Kraal in the city centre where the Jubilee Park³² has been built, but had to move because the area was declared urban. The last official royal site (near Inyoni Park Township) was declared urban in 1979, with no attempt to dismantle the traditional structures; hence, the existence of the traditional structure in what is now called the Moneni area.

Individuals who pay allegiance to the Senior Prince build their homes close to the Kraal to provide services to the Prince such as building the kraal and working in his field during the planting season. In order to develop these allegiances, Prince Mshoshi I distributed land to many people who needed to be at close proximity to their work places and instructed them to build emalawu (small huts)³³ and not homesteads. This therefore suggests that during relocation these individuals had to relocate with the Prince; and after relocation he continued giving permission to more people desperate to be near their work places. Prince Mshoshi administered the area as Swazi Nation Land since he was allocated³⁴ the area by King Sobhuza II (see Chapter Two for an in-depth profile of Moneni).

Key informants in this study asserted that the challenges faced by the Manzini City Council in Moneni emanate from the fact that the traditional structures, which existed before incorporation into the urban boundary, have not been dissolved or relocated. Traditional authorities have not been prepared to cede their authority with the introduction of the Manzini City Council (interview with City Councils, Ministry of Housing and Urban Development 2009) and have not been forced to do so. This is despite the fact that according to statutory law once an area is incorporated into the urban boundary, traditional authority is supposed to cease.

The informal settlements have continued to be administered by traditional institutions as Swazi Nation Land, yet they are within the urban boundary. This presents a number of challenges to the urban

³¹ This is the seat of chiefly administration where the Inner Council meets and is located at the home of the chief or Senior Prince.

³² It is an open space in the city centre which was developed into a recreational park by the Manzini City Council

³³ The idea was that it was temporary accommodation and their families remained in the rural areas.

³⁴ This is disputed by other traditional leaders and urban authorities.

local authorities and to the MHUD in terms of governance (World Bank Report 1992; Barnes 2004). The main challenge is that the chiefs consider themselves as equals or even above the government and municipal officials and, as such, refuse to comply with certain policies and standards that disregard traditional interests (interviews 2009). Such behaviour on the part of the chiefs, can be attributed to the fact that they are appointees of the King responsible for allocating Swazi Nation Land and report directly to him and not to the government (Kuper 1972; Nxumalo 1998; Rose 2002), hence they believe that they have no obligation to respect government ministries. The residents of the informal settlements of Moneni, following the wishes of their Prince Mshoshi I, have also refused to have the SUDP implemented in the area. The struggle between traditional leaders and urban authorities continued for over a decade (MHUD 2008; personal information; interviews 2009), a situation which confirms Delville's (1998) assertion that legal pluralism causes uncertainty over rights mainly because they are likely to be challenged. At the same time, this shows that land reform programmes have been thwarted by contestations as governments face opposition from the domain of local autonomy (Peters 2004).

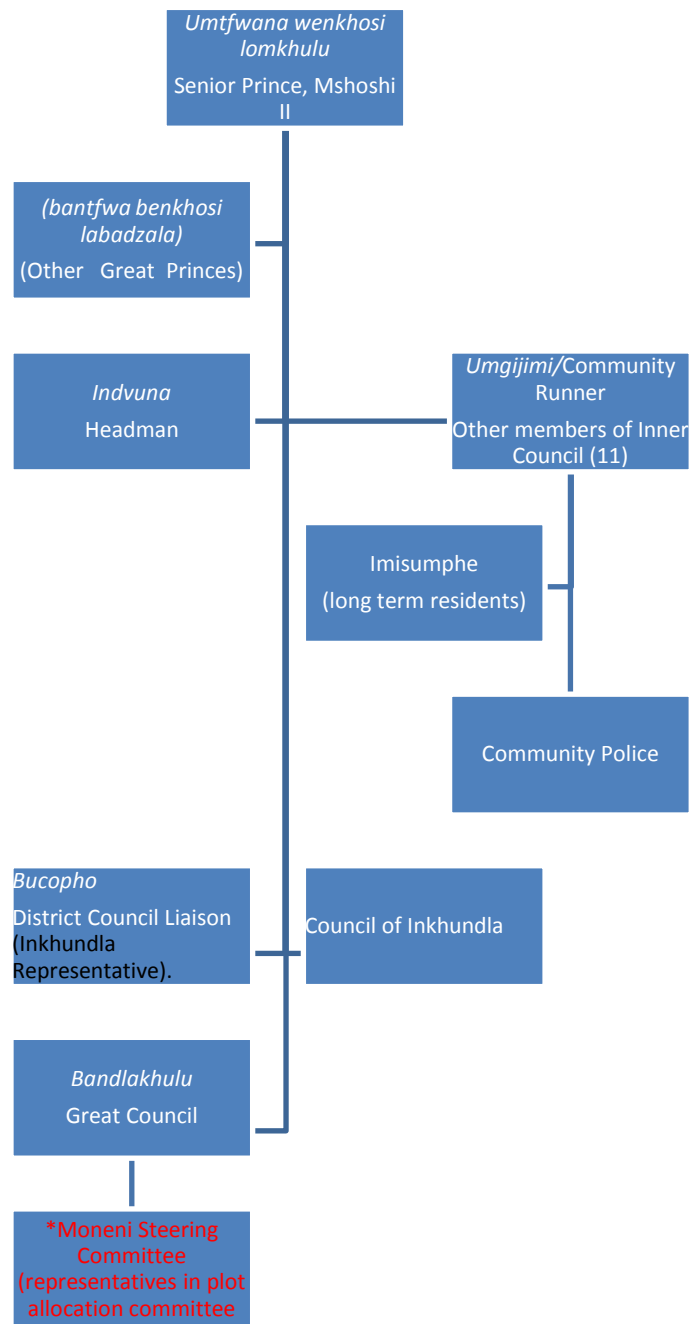
4.3 Traditional structures existing in the case study area, Moneni

The informal settlement of Moneni does not have a chief, but instead a Senior Prince who carries out most of the chief's functions, which include allocating land and getting the residents to pay tribute to him. Even though the Moneni area is within the urban boundary, it has always been administered as Swazi Nation Land. In this informal settlement, the customary or traditional structure in existence includes the Senior Prince and Inner Council (or *libandla*). Prince Mshoshi I (who was the first Prince to administer Moneni), and who passed on in 2003, was a respected authority. He allocated land and carried out most of the functions that a chief is expected to perform. In terms of the customary land tenure system, chiefs are mandated to allocate Swazi Nation Land to Swazis on behalf of the King (Kuper 1963; Matsebula 1976; Rose 1992; Levin 1997; Swaziland Constitution 2005). As a Senior Prince, Mshoshi I, processed official documents for the residents which required signatures of their chief, such as passports and scholarship application forms. Additionally, he facilitated economic development in the area. For instance, allocating land to residents who wanted to operate small businesses such as shops, handicraft and other self help projects. The current Senior Prince, Prince Mshoshi II, officially installed in 2007, executes the same functions as those of his father. These functions, especially the involvement of the senior prince and other chiefs in facilitating economic development in their areas other than land allocation, is evidence that African customary tenure systems are flexible and not static (Mabogunje 1992; Toulmin 2000; Durand-Lasserve and Royston 2002; Hamdi and Handal 2005). However, the implementation of the SUDP, which introduces a new tenure system known as the 99-year lease, has and

will continue to affect his functions. This explains why the Prince lamentably stated that the introduction of the 99-year lease presents challenges to the community by eroding traditional values such as that of paying tribute to him (interview 2010). He expressed his bewilderment ‘how am I going to instruct community residents to pay tribute to me if they pay rates to the City Council?’ (interview 2010).

The Senior Prince operates alongside the Inner Council, which consists of a Headman (Induna) and a Community Runner (or messenger) as well as 13 members, though sometimes the number is less due to factors such as death or demotion. The Senior Prince is an educated man who held a managerial position in the civil service before he retired in 2011, and also has a high standard of living, owning a home in Mbabane city’s high income township. Having worked with him before in my capacity as a development practitioner, I found him to be a very humble and accommodating leader but strategic in his leadership approach as the dynamics discussed in this chapter will demonstrate. Some of Prince Mshoshi II’s brothers (also recognised as Princes) reside in Moneni and form part of the Inner Council. Some of these Princes have additional properties in urban townships in Mbabane City where they also stay. Other Princes, who also have a say in Moneni’s land and jurisdiction issues, do not have homes in Moneni. Their authority stems from the principles of patrilineal descent. By virtue of being the respected and older half-brothers or uncles of the Senior Prince, they are entitled to provide advice on how to run Moneni. Consequently, most of the critical decisions that Mshoshi II makes require the approval of his older brothers (Princes) and he is expected to use a non-dictatorial approach.

Figure 4.1: Moneni Traditional Structure (Inner Council)



** The Moneni Steering Committee is not part of the normal traditional structure, it is a committee that was appointed by the Inner Council to represent the community under the SUDP and is supposed to report to both the Inner Council and Great Council.*

The headman and the community messenger (or runner) work very closely with the Senior Prince, which explains why in Figure 4.1 I have them separate from other members of the Inner Council. They assist him in dealing with matters such as disputes, requests for land, deaths, marriages, and so forth. The community messenger is a male resident who knows the homesteads in the area, and has been settled in the area for a long time. The headman and community runner have to be respected residents with good reputations in the community. Although conventionally there is only one headman, until May 2010 there were two headmen in Moneni as a second one had been appointed in 2008, as a support for the elderly headman. The traditional leaders had said that the workload warranted the appointment of a second headman. This was disputed by other residents who believe that the appointment of two headmen had to do with tensions between the initial headman and some members of the traditional leaders. However, the initial headman was dismissed in mid-May 2010, due to a misunderstanding between himself and the chief (which will be explained later in this chapter). Working with the Headman are several other people: the *Bucopho*, a man who acts as the District Council Liaison, see Figure 4.1, and serves as a representative of the community in the local *inkhundla*³⁵ (constituent) and *Imisumphe*, or long term residents with vast knowledge about the area and its history. When there is a dispute emanating from past issues they can be summoned by the chief or Inner Council to provide information, but they only play an active role when summoned, for example, resolve land or boundary disputes (Rose 1992). The Great Council is a forum where all adults in the community, regardless of gender, come together to deliberate community issues of concern; there is supposed to be freedom of expression.

Although these traditional structures have been involved in land administration in the informal settlements of Swaziland over a long time, the government still does not fully recognise them. In fact some government officials dismiss the existence of traditional structures within the urban boundary (interviews 2009/2010) and are more concerned with implementing statutory law which does not provide scope for the indigenous leaders and their followers. Contrary to these government officials' position, studies conducted on the phenomena of local government and land tenure give evidence of the existence

³⁵ Tinkhundla (plural for inkhundla) are administrative centres found in the four regions of Swaziland, namely Hhohho, Manzini, Lubombo and Shiselweni (Forster and Nsibandé 2000).

of the traditional structures within urban parameters (Foster and Nsibande 2000; Hoek-Smit 1988; Huchzermeyer and Karam 2006; Manzini City Council 2004). As is evident in the above description, urban authorities have a negative view and do not tap into the good experience that the traditional leaders have in dealing with land issues. These urban authorities, like other local authorities described by Durand Lasserre and Royston, have a role to play in launching and implementation of programmes, so they should establish a space for local communities to participate and in so doing, contribute effectively to land management (Durand-Lasserre and Royston 2002). Under the SUDP and at the advice of the World Bank, the government sought to be inclusive by involving the community in the project as the following section indicates. However, urban authorities have struggled to assert their authority over Moneni and to implement the SUDP.

4.4 The role of urban authorities

The operations of the urban local authorities are guided by the Urban Government Act of 1969, and urban boundaries are defined and gazetted by the MHUD, which is the local authorities' mother body (Swaziland Government 2006). The Minister of Housing and Urban Development is empowered by the Urban Government Act of 1969 to demand clarifications on certain operations of urban local authorities or Councils. With regard to land tenure, the Crown Land Disposal Act mandates this Minister to oversee all government-owned land in the urban areas. In spite of the availability of these legislations defining the parameters of the urban local authorities, they face many challenges in urban land management including planning informal settlements. The failure of the top-down urban management approaches to successfully upgrade and manage informal settlements has given birth to an argument about reconciling the formal and informal land tenure systems (Farvacque and McAuslan 1992; Mabogunje 1992; Fekade 2000; Kombe and Kreibich 2000; Durand-Lasserre and Royston 2002). This implies integrating actors and institutions existing in informal systems with those in formal systems. It also suggests involving these informal actors in the planning and implementation of urban development projects, which could change the attitude of government officials towards not only traditional leaders but also other residents of the informal settlements.

Currently, in the case of Swaziland, the Crown Land Disposal Act of 1911 gives powers to the Minister of Housing and Urban Development to oversee land owned by the government in urban areas. According to the Ministry and statutory law, the informal settlement of Moneni is on government-owned land; therefore the MHUD should allocate land as mandated by the legislation and by its incorporation into the urban area in 1979 by means of a gazette prepared by the then Ministry of Local Authority and

Administration. The MHUD, the Ministry now responsible for all urban authorities and urban land administration, seeks therefore to monitor issues of housing, urban development and urban land, in order to assert its claim over the jurisdictional matters of the Moneni area. The same Ministry played a coordination role for the SUDP. A Project Coordination Unit was established within the Ministry to monitor all stages of the project from initiation to final evaluation. It also chaired the Project Steering Committee, which had representatives at all the implementing and participating agencies, including government officials from different ministries, parastatals (Swaziland Electricity Board and Swaziland Water and Services Corporation, Swaziland Environment Authority), city councils and consultants. The main urban authorities involved in the SUDP thus included the Regional Administrator, the Councillor and the City Council. Each of these is discussed in turn below, exploring the scope of their involvement and their ability to positively engage with traditional leaders and the Moneni informal settlement residents.

4.5 The City Council

The City Council's duties include, but are not limited to controlling, managing and administering the municipality, maintaining and cleansing public streets, effecting development control and land management, promoting public health, welfare and convenience and abating public nuisance (Urban Government Act 1969). The same duties had to be executed in Moneni once the area was gazetted urban. Although the City Council tried to control development in the area, it was met with resistance from the community, including traditional leaders, who believed the area to be outside the urban area. In the early 1990s this tension resulted in the Council's officials being prevented from driving through the area in the process of carrying out their routine planning and health-related inspections by some residents' threats, and stones thrown at officials' car (key informants 2009). Since the area was not planned, the City Council focused on controlling development, abating 'nuisance' and preventing the building of new structures and extensions of houses, rather than the other duties such as cleansing public streets. With regard to public nuisance, the City Council's efforts to stop residents from keeping cattle in the area, as these are considered a public nuisance according to the Urban Government Act 1969, proved futile. After the threats that Council officials received from the community, they stopped doing inspections in Moneni. Consequently, the community continued to live as though they were in the rural area and taking instructions from Senior Prince Mshoshi I who acted as an overseer doing the duties that a chief would do. This was despite the fact that the Swaziland Urban Government Policy of 1996 also stipulates that the City Council will exercise full and singular authority over legally incorporated cities, municipalities and towns (Urban Government Policy 1996, Reddy 1999: 233). In view of the issues discussed above,

Moneni was spoken of as an eye sore and a waste of valuable land. The Swaziland Urban Government Policy of 1996 also states that regional administrators will play a coordination role between local authorities, ministries and peri-urban chiefs concerning issues that are outside the urban gazetted area. However, as the following section shows, they too were unable to fully mediate between the traditional and urban authorities in Moneni.

4.6 The Regional Administrators

The Regional Administrator, formerly known as the District Commissioner, is in charge of all local administrative issues in the district. The office of the Regional Administrator's status is equivalent to that of the Deputy Minister (Swaziland Constitution 2005). Regional Administrators are not directly involved in land administration but they are responsible for chieftaincy affairs and other issues relating to Swazi Law and custom. Unlike most Cabinet Ministers, the Regional Administrators are mandated also to deal with land issues, not necessarily to allocate land, but to provide a mediation role in land disputes in both rural and urban areas. It is, therefore, common to find them attending to land disputes on Swazi Nation Land. If they fail to resolve these disputes, the parties concerned are referred to the superior traditional structures, such as to the Ligoqo, which is King Mswati III's Advisory Council and, ultimately, to the King. Regional administrators are also responsible for coordinating development programmes and projects through the heads of government departments in the region (UNDP 2003). A study conducted by UNDP (2003) stipulates that the regional administrator's office is, however, one which lacks a clear job description and much needed authority even though the regional administrator is the political head of the region. During the SUDP, the Regional Administrator participated in some of the meetings which were intended to persuade the Moneni residents to accept the project. He arranged meetings where City Council and the Moneni traditional leaders discussed the issue of authority but all these efforts were not successfully (key informants 2009). However, in 2007, at a meeting attend by the MHUD, Manzini City Council and the Manzini Regional Administrator; the Moneni traditional leadership accepted the Regional Administrator's advice to accept the project because otherwise the funds would be forfeited. The advice followed that the MHUD had asserted that the failure to implement the project in 2007 would compel the government to reallocate the funds to another community that needed development. In this case the Regional Administrator played an important role that pleased both parties; the Moneni leadership was satisfied with this decision because it was agreed that only infrastructure would be put in place, whilst discussions on issue of authority continued with the Ministry of Housing and Urban Development. Meanwhile, this agreement was considered a milestone by the urban authorities because the implementation of the project meant that the urban authorities could easily operationalise urban

regulations in the area, something they had struggled to do for many decades. For instance, residents would now have to submit a building plan to the Council for scrutiny before embarking on any development. This in turn would result in a reduction of unplanned development in Moneni and the introduction of 'order and beauty' in the area, as envisaged by the development planners (see Chapter Five). Ironically, most of the SUDP meetings took place without the involvement of the Councillor of Moneni who continued to refuse to acknowledge that traditional leaders could play a role in urban development. This was despite of his position as a representative of the area in urban development as mandated by the Urban Government Act, 1969. The struggle over the issue of authority and the resultant agreement to focus on infrastructure in effect completely marginalised the Councillor of Moneni (see Chapter Five for a detailed analysis about the effects of the interaction on the residents).

4.7 The Councillor

Another actor also involved in the contestation over the authority of Moneni is the Ward Councillor of Moneni who attends all Council meetings even though the residents of Moneni do not pay rates. A councillor is an elected representative of the ward, who on election automatically becomes a member of the City Council's Board. The Councillor of Moneni is a middle-aged man with high school education. He is mainly favoured by the youth of Moneni and provides financial support for their sporting activities especially soccer games. Some key informants observed that his financial support is the reason why he won the municipal elections. In an interview, the Councillor argued that by virtue of being a representative of the Municipal Council, he is supposed to be a member of the Chief's Inner Council and of the Moneni Plot Allocations Committee. Yet, it is clear from the minutes that the Councillor is not in a particularly influential position as he is sidelined by the traditional leaders and the Manzini City Council; therefore he is unable to use this representation to mediate between traditional and urban views of the SUDP. In Council meetings, the Moneni Ward Councillor lambasted the Municipal Management especially the Planning and Community Development department for sidelining him in matters pertaining to the SUDP. His perception was that the Moneni area is not supposed to be run by customary practices, and therefore the traditional structures are not the official authority of the area. He blames the simultaneous existence of different tenure systems, which he believes have negatively affected development in the area. His opinion was that 'the Moneni traditional leadership should tell the people that they are now under the City Council' (interview 2009) and, in so doing, should relinquish all their claims to leadership in Moneni.

All the actors whose roles are described above were involved in the SUDP, either as part of traditional or urban authorities or, as in the case of the Regional Administrator, with duties that overlap both. The following sections investigate the nature of their interactions in urban development and shows the limitation of top-down approaches to urban land management and the planning of informal settlements. It shows that the neglect of the informal authority structures involved in land administration results in socio-political dynamics culminating in delays in the development projects and the escalation of urban services costs (Mabogunje 1991).

4.8 Capturing the interaction pathways between the SUDP authorities

Written reports and information gathered from most informants and sources in this study show that the interaction of these two forms of authority do not, as Takirambudde (cited in Rose 1992) suggests, always demonstrate the triumph of an indigenous authority. Rather, this research demonstrates how the friction between the authorities spills over to the residents and most residents find themselves caught between the traditional and urban authorities, as both seek their compliance. The MHUD and the entire Cabinet, including the Prime Minister, who is the head of government, have no authority over Swazi law and custom. This complicates the process of development in the informal settlements, where traditional structures exist as urban ministers have no power over the distribution of Swazi Nation Land; rather the chiefs are the custodians of the land and they report directly to the King (Swaziland Constitution 2005). Thus, in the Moneni informal settlement, traditional leaders continue to claim authority. This has presented, and still presents, challenges to the Ministry and the city council in their quest to implement urban programmes mainly because the traditional leaders oppose such activities, which they consider to be undermining their authority. Studies show that conflicts emerge between statutory regulation and customary tenure, mainly as a result of existing land use control and new regulations imposed under statutory land tenure, which do not address the needs of the urban poor (Mabogunje 1980; Stren et al 1992; Kombe and Kreibich 2000; Rakodi 2001).

The introduction of the SUDP in the informal settlements of Moneni in the early 1990s resulted in dynamic interaction pathways as different authorities and other actors involved in land administration and management carried different visions and trajectories for the project. The traditional leaders and urban authorities fought – through the process of implementation of the SUDP – for recognition as the single, official authority of the area and used different reasons to justify their positions and claims. On the one hand, the traditional leaders believed that Moneni fell outside the urban area and therefore was designated Swazi Nation Land. On the other hand, urban authorities (MHUD and Manzini City Council) insisted the

area of Moneni is under their jurisdiction by virtue of being declared an urban area by the Ministry of Housing and Urban Development. Intricately linked to the issue of authority and also aggravating it, was the issue of the residents who, aggrieved by the project were left in a state of limbo by the contestation. It could be argued that new frontiers were created through struggles involving actors, contexts and dynamics. The frontier sites are 'sites where authorities, sovereignties and hegemonies of the recent past have been or are currently being challenged by new enclosures, territorialisations and property regimes' (Peluso and Lund 2011: 668).

In the analysis which follows, I include other actors who were involved in the project and found themselves caught up in the wrangle between the 'bulls' (MHUD, MCC and traditional leadership) in various ways. Other actors entered into these fights at the request of the contesting authorities, as residents aggrieved by the project sought resolution or at their own discretion to either mediate or express their concerns and all these led to the messy and complex interaction pathways captured in Figure 4.2 below:

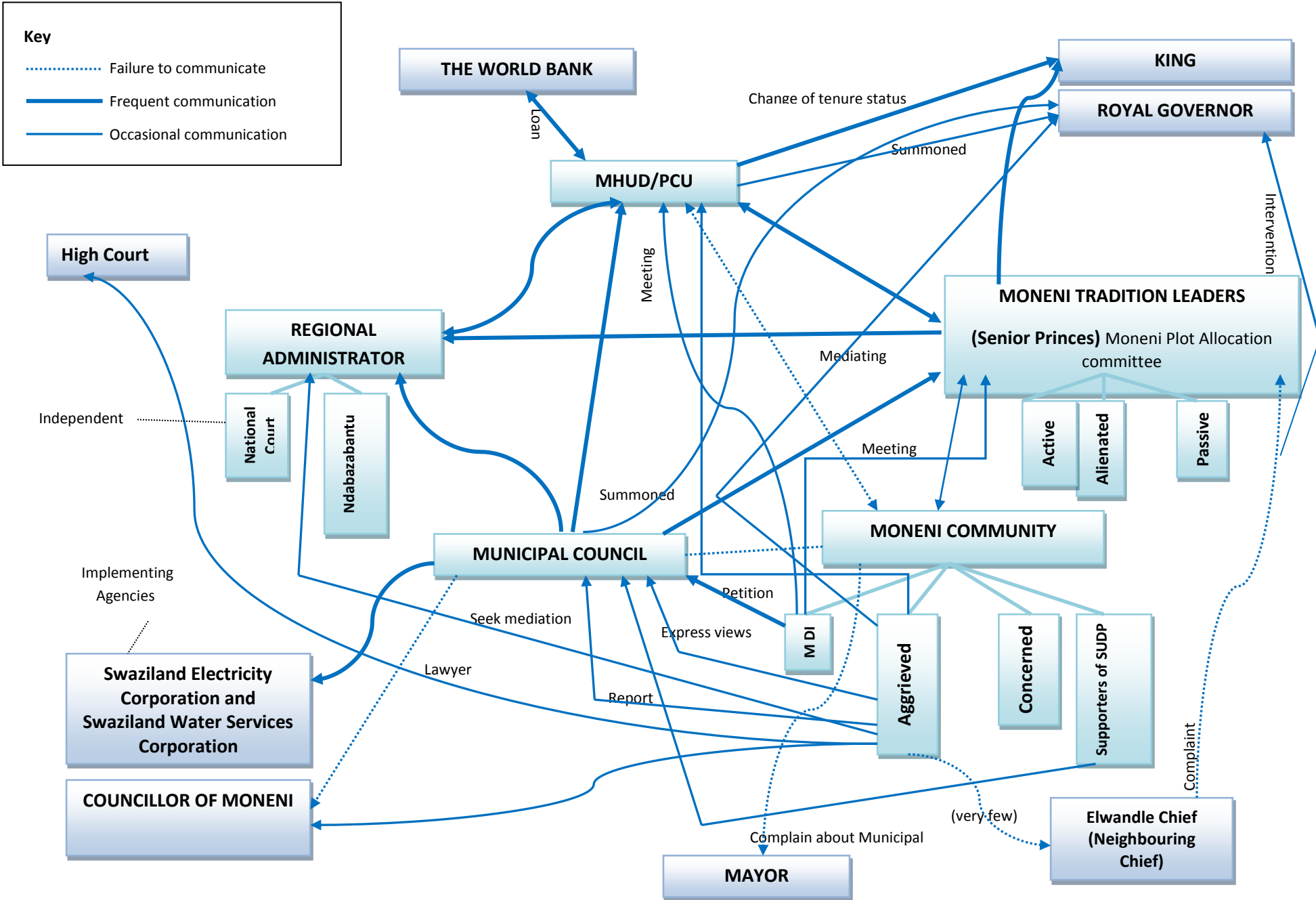
[illegible]

Figure 4.2 indicates the myriad of actors involved in negotiations over land issues pertinent to the implementation of the Swaziland Urban Development Project. It shows how pathways intersect and the lack of clear lines of communication amongst the various actors. The messiness represented in the figure attests to the sentiments held by a majority of the key informants and focus group discussions that there is confusion in the area. One such example concerns appeals made. Despite being in charge of SUDP implementation, the Ministry of Housing and Urban Development must still heed the summons to the King's Advisory Council, made on its behalf by the Royal Governor³⁶ to explain the MHUD's actions after a certain resident appealed against the ministry's decision to relocate his houses in order to make way for the SUDP infrastructure. Key informants revealed that in this case the complainant failed to get the anticipated favourable response. Instead, the King's Advisory Council instructed the MHUD to give him alternative land and cautioned the man not to hinder development. The complainant had accused the SUDP of evicting him from the area; however the MHUD countered the argument stating that no person in the project areas had been evicted. The full case is described in Chapter Five of the thesis. In another example, recently the Moneni community instructed the Senior Prince to go and appeal to the King regarding the 99-year lease and rates which they say do not suit them (key informant 2010). In an effort to resolve the tensions between the traditional and modern authorities, meetings were held at different stages of the project, but no agreement could be reached concerning who had the ultimate authority. These negotiations delayed the project implementation stage. Consequently, implementation only took place a decade after the initially planned commencement date. The tension resulting from the coexistence of the different authorities is also noted in Manzini City Council's 2003/2004 Annual Report; which reads:

Not much progress was achieved in the Moneni, Mangwaneni, Ticanweni and old Zakhele upgrading programmes. The politics of the traditional authorities in Moneni, Mangwaneni and Ticanweni were instrumental in this regard. Traditional structures in these areas continue to impede Council operations with the pretext that they are on Swazi Nation Land (Manzini City Council 2004: 15).

The co-existence of the modern and traditional structures, coupled with a resistance to cooperation, suggests that they both see themselves as the rightful authority. Clearly, legal, customary and

³⁶ Swazis believe that a King must have an indvuna (Royal Governor). The indvuna is based at the headquarters of the Royal villages, Lobamba. He 'hears cases, announces court judgements, advises on the temper of the people and acts as their representative' (Kuper, 1963: 33). He is sometimes referred to as a traditional Prime Minister due to the fact that he is in charge of customary issues.

conventional authorities may have overlapping jurisdiction of authority (Ribot and Peluso 2003). Having examined the perceptions of urban authorities – who see the traditional leaders as frustrating their work and as illegitimate, the study now examines the messy landscape in which negotiations take place over authority.

4.9 Justifying jurisdiction

Scholars assert that customary rights are often widespread and socially legitimate (Mabogunje 1992; Toulmin and Quan 2000; Rakodi 2001; Durand-Lasserve and Royston 2002; Peters 2004). Nonetheless, Mabogunje (2002) argues that actors in urban development need to accept these urban regulations as legitimate and enforceable for the system to work. Rakodi (2001: 211) clarifies that ‘legitimacy is not derived automatically from the enactment of legislation’ and may instead be defined as the ‘belief that the authority is entitled to issue commands which citizens are obliged to obey, the response to non compliance being coercion’. These scholars emphasise the importance of project acceptance by communities in developing countries and point out that, underlying the issue of whose authority counts, is confidence and acceptance of the institutions with decision-making powers. Jenkins, examining the issue of coping with informality in developing countries and using the case of Mozambique, concludes that ‘the basis for political relations may be based more on accepted authoritarianism or negotiated patronage than elected representation’ (2001: 4) and, as is discussed below, the case of Moneni illustrates this assertion.

The Senior Prince of Moneni and his Inner Council justified their jurisdiction over the Moneni area by asserting the area has always been Swazi Nation Land, and has always been administered by chiefs. They pointed to the fact that King Sobhuza II allocated the area to Prince Mshoshi I after his home was relocated from the city centre to make way for urban expansion. Based on this perception, in 1999 the Moneni traditional leadership requested, in their meeting with the Minister of Housing and Urban Development that the area, and they as leaders and representatives of the Moneni community, should be allowed to:

- develop their own way: this would involve the urban government installing infrastructure and then allowing people to build without complying with urban regulation, without buying the land and without paying rates (as is usually the case in urban areas).
- develop without involving the City Council unless requested by the community to provide a certain service such as collection of solid waste; and,

- invest available SUDP funds in the establishment of commercial businesses in the area.
(minutes 1999)

These requests, which emphasised the authority of the traditional leaders and saw the urban authorities merely as service providers, did not go uncontested. In response, the then Minister of Housing and Urban Development emphasised that the Moneni area is located on a government farm and not Swazi Nation land. She further clarified that the SUDP was managed by her ministry and she dismissed the request for investing in commercial businesses on the basis that the SUDP money was for infrastructure and upgrading projects. Ultimately, the Minister told the Moneni traditional leadership, that since she had been instructed by the King to implement the SUDP, she would report back to Him about the non-acceptance of the SUDP by the Moneni leadership ³⁷ (minutes, 6 August 1999).

The traditional leaders of Moneni openly dismissed the gazette produced by the Ministry of Housing and Urban Development as proof that the area was legally incorporated into the urban boundary. In contrast to the urban authorities' use of official documentation, the traditional leaders relied on oral evidence and pointed to the failings of the modern systems of governance. Thus, when the Ministry asked them 'what instrument was used to change the land to Swazi Nation Land when transferred to Prince Mshoshi I?' (minutes 1999), the Princes explained that it was a verbal allocation by King Sobhuza II. This oral claim was supposed to have been documented by the then Minister of Local Government, Prince Masitsela, which according to key informants, he failed to do. Hence, no title deed is available. The contentious interaction that took place between the traditional and modern authorities is not new and it is worth examining how it was resolved previously.

4.10 Precedence on handling issues of authority in Swaziland's urban areas

With regard to the issue of urban development, key informants from the MHUD, MNRE and some long-term Municipal officials explained that, in the past, a chief whose area of jurisdiction had been incorporated into the urban boundary would be given an alternative area or farm outside the urban boundary where he could continue ruling his subjects. For instance, Chief Mbabane Kunene had been relocated at least three times from the city of Mbabane to make way for urban expansion and ultimately he was granted a farm at Pine Valley where he built his Royal Kraal. In the case of Manzini City, Prince

³⁷ However, she also informed them that they too could go and see the King if they wanted.

Mshoshi I was likewise relocated at least three times due to constant expansion of the urban boundary. This probably explains why some residents of Moneni argued that the government should have relocated them to a farm outside the urban area.

Interest into the issue of authority prompted me to follow up a key informant, Mr. Ben Sibandze who served in the civil service in different positions of authority such as ministerial positions (including being acting Prime Minister), from the early 1970s³⁸ to the 1990s. At present, he is the Regional Administrator for the Hhohho region and Director of the National Disaster Management Authority. Ben Sibandze explained that if part of a certain chiefdom is declared urban, the ‘chief has to remain chief except that land is allocated according to urban government laws’. All social development and cultural issues continue to be dealt with according to Swazi Custom and Law, hence, they are controlled by the chiefs. For instance, according to Swazi Custom and Law, all men above the age of 18 in Swaziland have to apply for and receive tax identity cards in the name of their chiefs; regardless of whether they stay in urban or rural areas. In this way, all subjects continue paying recognition to their chief. They also continue to attend social functions arranged by the chief even though they might live in an urban area. The statement made by the Administrator regarding the registration of identity cards explains why in most, if not all, cases where the informal settlements that have been declared urban (but which were previously Swazi Nation Land), the residents continue to associate themselves with the chiefs. Sibandze’s reflections also explain why, despite the formal change to urban legislation, many urban residents might continue to recognise and prioritise the authority of the chiefs.

The Regional Administrator said this arrangement only becomes a problem because of the manner in which City Councils handle issues relating to informal settlements – and here he referred mainly to their failure to consult urban residents. For example, in Elwandle, where he serves as the main Headman: ‘They just wave the gazette, an instrument used to declare the area as urban, which results in communities resisting the new authority’. The Administrator also emphasised that consultation forums are necessary because this is where the rights of the residents in relation to the new development are explained and where they in turn can voice their concerns and expectations. Other key informants observed the lack of consultation during the initiation of the SUDP and suggested that this had led to the traditional leaders’ strong resistance. In spite of its realisation for decentralisation and having formulated a Decentralisation Policy, the government of Swaziland – through the Ministry of Housing and Urban

³⁸ This refers to the period immediately after independence (1968).

Development and relevant City Councils – neglected consulting with the residents of the informal projects involved in the SUDP.

With regard to Moneni, the Ministry of Housing and Urban Development and the Manzini City Council only embarked on rudimentary consultations with the traditional leaders, immediately before project implementation. The word ‘rudimentary’ is used here because the research found that the traditional leaders were only invited to a workshop to be told about the SUDP once it had already been conceived and prepared. Traditional leaders of Moneni vividly remember the workshop held in Piggs Peak where they were informed about the project and asked to indicate if they accepted it or not. The leaders requested more time to consult with the elders of the community, but when they did this, the people advised against accepting the SUDP. However, the MHUD and other City Council officials insist that the traditional leaders were adequately consulted. The case makes it clear that community participation accompanied by decentralised decision-making is necessary, rather than simply expecting communities to endorse the government’s decisions (Burns and Taylor 2000; Forster and Nsibandé 2000). In a devolved approach, involvement at community level is essential because ‘the neighbourhood is seen as the primary context (beyond the household) for family life and as a focus of many informal relationships and activities’ (Chaskin and Garg 1997: 633). There is therefore need for continuous involvement of marginalised groups at community level when seeking to implement development projects (Chhotray and Stockey 2009; Memon et al 2006).

Having demonstrated the perceptions that the different authorities carry, I now examine the SUDP activities that are still pending in Moneni as a result of the contestation over jurisdiction. This provides insights into the interaction between the traditional and modern authorities and demonstrates how their perceptions have shaped the SUDP.

4.11 SUDP activities embedded in dynamic interaction pathways

The contestation between the traditional and modern authorities revolved fundamentally around the core pillars of the project, namely the 99-year lease, the plot allocation policy and criteria, resettlement policy and guidelines, the cost recovery principle and town planning standards. As discussed in this section, these pillars created tensions between the traditional leaders and urban authorities. The 99-year lease was implemented in a context of urban growth leading to high demand for urban land; and within a legal pluralism context in which there are competing demands for this resource expressed in terms of the contested ownership and uses of urban and peri-urban lands (Moyo 2008). All key informants in the study explained that the bone of contention between the Moneni traditional leaders, the

Ministry of Housing and Urban Development and the City Council was the introduction of the 99-year lease tenure system in the informal settlement. This is because, contained within the 99-year lease, is a transfer of authority from the traditional authorities to modern ones, namely to the Ministry of Housing and Urban Development, the City Councils and to some extent to lending institutions (see Chapter Three). This is also because, as a piece of new legislation, the distribution of land under the 99-year lease is regulated by statutory law which does not recognise the role of the chiefs within the urban boundary.

Closely related to the above and also an issue of concern for the traditional leaders with regard to introduction of the 99-year lease, is these leaders' perception that, as citizens governed by modern legislation, people will tend to be 'self ruled' acting like 'kings' over their personal plots of land. This will massively undermine the role of chiefs and other traditional leaders, as one of their main sources of power stems from their involvement in land allocation and settling land disputes. This explains why the Senior Prince of Moneni³⁹ said that the challenge resulting from the SUDP and the introduction of the 99-year lease is the erosion of traditional values such as paying tribute to the Prince. Another activity, which falls under the issue of authority, is that of the plot allocation process which has to do with land administration. Any authority that is distributing land yields a certain amount of influence; hence, taking this function away from traditional leaders has repercussions on their jurisdiction. The following paragraphs will examine the involvement of the traditional leadership in the SUDP plot allocation exercise, and the interactions that occurred as a result of these tensions over the jurisdiction of the Moneni area.

In 1998 the Minister of Housing and Urban Development formed a Plot Allocations Committee chaired by the Ministry of Housing with the secretariat function resting with the Swaziland National Housing Board.⁴⁰ In the plot allocations committee, seven community members represented the Moneni community. The members were not democratically elected but appointed by Prince Mshoshi I and chairperson of the committee was Prince Polycarp.⁴¹ The main function of the committee was to prepare a provisional list of all Moneni residents – who would be eligible to receive plots if the SUDP disrupted

³⁹ Interview with Prince Mshoshi, 30 April 2010.

⁴⁰ Swaziland National Housing Board is a parastatal organisation that initially was the implementing agency of the Swaziland Urban Development Project in Moneni and Msunduzu. However later Government handed over the Moneni project to Manzini City Council.

⁴¹ Prince Polycarp is the son of Prince Mshoshi I, after the death of his father he assumed the position of Senior Prince and was thus re-named Prince Mshoshi II.

their access to land – which would then be submitted to the Minister of Housing and Urban Development for approval (see Chapter Three for detailed information on plot allocation criteria).

The allocation list – drawn up by the Moneni Plot Allocations Committee using the census report as a basis was meant to be compiled and finalised at the beginning of the project, yet it was forwarded to the Minister of Housing and Urban Development for approval at least three times. This was because the project was repeatedly stalled and whenever it recommenced, the re-advertisement of the plot allocation list had to be done to allow residents to submit their objections. The submission of objections was meant to ensure that residents who were not satisfied with the Plot Allocations Committee's decisions would be able to lodge their objections. Prince Mshoshi II sometimes instructed the allocations exercise to stop, (discussed in-depth below) and then after some deliberations, it would resume. It is against this background that the Minister in the print media advertised the plot allocation list in 1998, 2000, 2004, and 2009. Residents lodged their objections, with many complaining that their plots had been allocated to the wrong people. The allocations committee attempted to resolve the objections that were lodged but some of them were still pending in June 2010 (Manzini City Council 2010). In spite of the fact that this process had begun a decade earlier, finalisation of the allocation list is still pending and the plot allocation committee still sits at least twice a month to carry it out the plot allocation exercise. The secretariat function rests with the Manzini City Council, meaning that the organisation is not only implementing the SUDP, but also arranges the plot allocations meetings, takes records of meetings and keeps all documents about the allocation process.

The plot allocations exercise in Moneni could not be completed at the same time as the installation of infrastructure. This was the result of a series of protracted delays as the traditional and modern authorities both attempted to assert authority and used the allocation process as a means of doing this. The traditional leaders would sometimes withdraw the services of the Moneni representatives serving on the Plot Allocations Committee. For instance, in 1998, Prince Mshoshi I wrote a letter to the Ministry of Housing and Urban Development stating that the allocation process should stop pending a meeting by the Inner Council on the issue of authority and indeed as a result the process came to a halt (Project Steering Committee Meeting 1998). Again in 2004 Prince Mshoshi II instructed the Moneni representatives on the Allocations Committee not to continue with the allocations because the Ministry of Housing and Urban Development only considers Manzini City Council as an authority while failing to recognise the role and authority of the traditional leaders. Part of the letter written by the Senior Prince to the Minister of MHUD reads as follows: 'It has transpired that the Project Coordination Unit, through a mini-workshop held on 9 June 2004, has stated clearly that the 'Moneni Area's authority' is the Manzini City Council.'

The Senior Prince stated, in this letter, that as a result of the above statement they were no longer happy with participating in the SUDP. This particular incident resulted in new meetings held between the Ministry of Housing and Urban Development and the City Council seeking better strategies for addressing the leadership and community. This, in turn, delayed the allocation process (minutes 2004).

In desperation, in a meeting held on 28 March 2007, the Ministry officials (including the Principal Secretary and the Project Coordination Unit's coordinator) explained to the traditional leaders that there is external funding from the World Bank loan involved in the project and as such the project has limited time. The Regional Administration Secretary explained that if the Project did not get implemented in 2007, the government would invest the money in other communities. The government officials emphatically clarified that, should the Moneni community forgo this opportunity to utilise the funds, it might take ages for the government to provide any kind of infrastructure in Moneni (personal information 2007; key informants 2009) if it does at all. This meeting can be seen as the climax of the 'cold war' between the residents of Moneni and the urban authorities as the former requested some time to consider the issue and, a few weeks later, responded positively. In the form of a letter, Moneni's traditional leadership gave a green light to the MHUD and City Council to implement the project, on the condition that the issue of authority would be discussed; meanwhile infrastructural work would progress. The 2007 meeting can be considered an important one, which led to infrastructure provision (and in so doing, the implementation of the urban development project) in Moneni. The discussion meetings held with the traditional leadership saw the resumption of the allocation process after a two-year delay. The traditional leaders agreed to continue with the project after the Ministry of Housing and Urban Development assured them that their concern about questions of authority would be discussed and considered simultaneously with project implementation. To convince the traditional leaders that the issue of authority had neither been shelved nor implicitly resolved through the act of implementation, the MHUD explained that – at least for the time being – the City Council was only serving as a developer assigned by the Ministry of Housing and Urban Development. This is necessitated by the fact that City Council represents the government at local level and not because Council had assumed authority for the area (minutes 2007). This statement contradicts initial statements made by the ministry that the area is under the jurisdiction of the City Council and of course supported by the Urban Government Act 1969 and the Crown Land Act 1961, amongst others. The interaction demonstrates Peters (2004) assertion that legal pluralism typifies a mix of typologies which on paper might appear clear yet in practice lack clear parallel lines and are often characterised by contradictions.

The contradictory statements made by the Ministry of Housing and Urban Development Officials and the downplaying of urban authority could be interpreted to be a political ploy to get the project

implemented, because there was a gazette declaring the area urban which the ministry had previously referred to. The traditional leaders, most of which have tertiary education and hold executive positions in different organisations, agreed that the project should continue but asked for a written letter stipulating this agreement. The Ministry of Housing and Urban Development in its correspondence with the traditional leaders stated: 'The issue of ownership of the land may be discussed later but it must be emphasised that it is a government property' (minutes 2007). It is interesting that the letter was cautiously worded such that, later on when the traditional leaders reminded the Ministry about the issue of authority, officials from the Ministry would argue the letter did not say that the matter would be discussed but rather that it might be discussed at the discretion of the MHUD. This is also an indication that the issue of authority was not given priority and, although the traditional leaders did meet with the Minister in Mbabane (at the Minister's office) a couple of times, they did not get to the bottom of the issue.

Even though the above-mentioned agreement was made, the traditional leaders continued to use the same tactics of sometimes stopping the allocations. Nonetheless, by June 2010, during fieldwork for this study, the final Moneni allocation list had been submitted to the Minister of Housing and Urban Development for approval. Key informants from the City Council pointed out that the Minister will now, yet again, advertise the allocation list for Moneni residents to lodge their objections. Data collected during the fieldwork indicates that there will be many objections from the residents (discussed in Chapter Five in more detail).

Traditional leaders' and their followers' non-acceptance of the project was shown by the ad hoc withdrawal of Moneni representatives from the allocation process. In an effort to get the cooperation of the leadership, the Ministry of Housing and Urban Development gave vague reassurances that the issue of authority would be looked into later and pleaded with the traditional leadership to allow project implementation to commence. This raised hope for the traditional leaders that their authority would be retained or some kind of proposal to allow their coexistence would be allowed. Ultimately, however, the Ministry had no authority to resolve the leadership question and, as demonstrated above, this was not in the Ministry's interests.

The contents of the above negotiations give the impression that without the promise made to the leadership of Moneni regarding the issue of authority, the project would not have been implemented at all or the Ministry would have had to seek alternative strategies. To date, the Senior Prince and the other traditional leaders use this statement - that the issue of leadership will be dealt with - to counter any claims made by either the Ministry of Housing or the City Council that the latter is the authority for the area. For instance, minutes from 6 October 2010 indicate that the Moneni representatives' chairperson

reminded the Plot Allocation Committee chairman that, prior to commencement of the project, both parties agreed that project implementation should proceed while the issue of authority is deliberated upon (plot allocations minutes 2010).

The interactions between the modern and traditional authorities explained above also included the issues of cost recovery and building standards. Actually, the traditional leaders used these two issues as a means to express their resentment of the 99-year lease, and of the involvement of City Council in the development of Moneni.

With regard to the cost recovery principle (which as explained in the previous chapter focused on the recovery of all project costs through the sale of serviced plots), the traditional leaders expressed their concern that community members could not afford the plot price as most of them were poor. They viewed this principle as a strategy for evicting residents from the area. In a meeting held between the Minister of Housing and Urban Development and the Moneni traditional leaders in 1999, to ascertain why the latter resolved to put allocations on hold, the traditional leaders argued they were dissatisfied with the Ministry's responses to their questions. Below are the questions the traditional leadership had posed to the Ministry and the responses they received:

1. How will land be allocated?

Response: The land will be sold.

2. What will happen to those who fail to buy?

Answer: They will be kicked out.

3. Since Moneni will be in the urban area, what will happen if one fails to pay rates?

Answer: they will be kicked out.

4. Where will these 'kicked out' people settle?

Response: This will be looked into in future (no direct answer).

5. On the death of the parent, what will happen to the children?

Response: None

(minutes, 1 March 1999)

Based on these answers, the traditional leaders told the minister that they concluded that the project is meant to benefit the rich and not the poor. The above-mentioned questions demonstrate traditional leaders' concern over issues of cost recovery; with a determinant factor being affordability for their followers.

Closely related to the issue of affordability is town planning standards that Councils introduce to areas under their jurisdiction; which the traditional leaders contended would deprive the poor from benefiting from the project. Town planning standards require compliance with the development code, which stipulates type of material to be used in constructing houses and the number of units per plot.

They also restrict the operations of commercial businesses from residential homes unless a special permit (special consent) is obtained from the Council or rezoning is effected in all urban zonings and all these are tedious lengthy processes requiring money. For instance, according to the Development Code, not all businesses are allowed by special consent and to get special consent to operate a business from a residential site one needs to apply to the city council and then advertise the intent to operate the business in the print media for at least seven days. The applicant must also erect, on the earmarked site, a conspicuous sign with the same information and all these involve costs in addition to the one hundred and fifty Emalangen (E150-00) (equivalent to US\$20-00) which is required for the licence. The cost of rezoning a plot costs E1500-00, which is equivalent to US\$195-00. The traditional leaders argued that most of Moneni residents could not afford to comply with these standards. This was despite the fact that the development code had been reviewed to cater for the informal settlements through introduction of a flexible zoning, namely, Grade II Residential District, which allows the use of traditional building material and the clustering of many units in a plot. Residents are also expected to adhere to the Building and Housing Act of 1968, which requires that building plans should be submitted before construction as well as the payment of scrutiny and inspection fees. The special consent conditions will also apply. The traditional leadership therefore expressed concern that most of the residents of the informal settlement of Moneni are in poverty and therefore cannot afford to meet the standards of development required by the City Council. One particular case that the traditional leaders raised over and over again as problematic was the annual payment of rates. In an interview, Prince Mshoshi II, opined in eloquent English:

I personally have nothing against the involvement of City Council because the end results would be the same anyway even if the Ministry of Housing and Urban Development was the developer, since there has to be recovery of the money pumped into the project but residents are concerned about paying rates.

In spite of the above statement and given the interaction that took place before (explained in the above sections), it can be concluded that the issue of rates helped the Senior Prince and other traditional authorities justify their reluctance to relinquish the authority they had exercised over the area for a long time. In essence, the traditional leaders looked for every negative aspect of the City Council regulations and capitalised on these to win the support of the residents and to demonstrate to the Ministry of Housing

that the involvement of the Manzini City Council in Moneni was a bad idea. In addition, the traditional leaders further expressed their concern with the erosion of traditional values, such as paying tribute to the Senior Prince (interview 2010). As an educated professional himself, and contrary to the perceptions of some of the traditional leaders and residents, Prince Mshoshi II stated that he was aware that the area had been incorporated into the urban area. He argued, however, that the Ministry was wrong in so doing because King Sobhuza II had said that, the town should develop only towards the west of Manzini and not east, where Moneni lies. The Senior Prince emphasised that Moneni people were not going to allow the Council to be the authority in the area and said that this had been communicated to the Minister in a meeting held in 2010 (interview 2010). The Senior Prince intended to appeal to the King who is the ultimate owner of land in Swaziland, as instructed by the residents of Moneni at a community meeting held in 2009. In the meantime, while waiting for such an opportunity to meet with the King again regarding the matter, the Senior Prince and Inner Council continued to assert their authority in the area of Moneni. As discussed in the following section, those residents of the area who had evaded payment of khonta fees were told to meet their traditional obligation—which in turn became another bone of contention between the traditional and modern authorities.

4.12 The issue of the Khonta fee

In 2009, the traditional leaders of Moneni instructed those residents of Moneni who, according to their records, had neither paid a khonta fee of two thousand and five hundred Emalangeni nor given a beast to Prince Mshoshi I, to pay the khonta fee. This was seen as a condition for being full residents of Moneni and for establishing eligibility to plot allocation. At a plot allocations committee meeting held on 7 October 2009, the chairperson of the allocations committee and a representative of the Ministry of Housing and Urban Development raised the issue of the Khonta fee. He reported that the Moneni Development Initiative had lodged a complaint about this renewed demand for khonta fees. He mentioned that as far as the government is concerned the land belongs to the government, is not Swazi Nation Land, and therefore all residents must be given equal treatment in the plot allocation exercise and not pay any khonta fee.

The Moneni Steering Committee or representatives of the Moneni Community in the Plot Allocations Committee (some who also are traditional leaders of Moneni), argued that the requirement for the payment of the khonta fee by all residents was meant to bring fairness to the residents. As discussed in earlier chapters, the payment of the fee serves as process of introducing the residents to the leadership of Moneni so that they will be fully represented and provided with pertinent services that require the

endorsement of the leadership such as applications for scholarships, death certificates and any other services provided by the traditional leaders.

Council officials wanted to know what would happen to those individuals who cannot afford to pay the fee. They explained that the SUDP is meant to raise the standard of living of the residents therefore such requirement seems to be against the principles of the SUDP. They also explained that the international community monitors the SUDP; therefore, violations of the international standards governing project implementation could be drawn to its attention. MHUD and Manzini City Council officials suggested that the Moneni traditional leadership should reconsider the issue of the khonta fee; and not to deprive residents of plots just because they cannot afford to pay the fee.

In this case, we see that everyone – traditional leaders, urban authorities and residents – are trying to work through these complicated situations in a way that operates best for them. Although in general the traditional leaders would like to do things that benefit the community residents to win their support, they are also concerned about generating revenue. It is not clear how the money will be spent; something, which is contrary to their resentment of the plot price and rates that urban authorities have introduced. Residents, who resent the payment of rates and the plot price, play off the different authorities and take this particular issue of Khonta fees to the urban authorities. Both authorities are trying to motivate people to support their version of development and modernisation and both want people to pay either through Khonta fees or the plot price and rates and both invoke different people to support their version of development. The people of Moneni therefore found it hard to know which of the authorities to support because it was seemingly impossible to work out who might win or which side will ultimately be the leaders because both are answerable to the King.

It can be inferred that the subtle approach of the ministry and the city council in dealing with these issues – of authority, of Khonta fees, of plot allocations – demonstrates how much the project is on the ‘edge’, meaning its implementation is at the mercy of the traditional leadership. The Ministry has not been prepared to rock the boat by pointing out that the traditional leadership has no legal grounds to charge the Khonta fee, instead it tells the traditional leaders to reconsider their decision.

All these dynamics give a picture of the intense interaction that took place between the traditional and modern authorities. It demonstrates an underestimation by the Ministry of Housing and Urban

Development of the nature of informal settlements. The MHUD had nurtured the assumption that the informal settlement residents would accept the project and the ‘new’⁴² authority of the City Council with little or no resistance. The underestimation of the authority of the traditional leaders in Moneni may be one factor why the Ministry of Housing and Urban Development did not put in place any mechanism involving the traditional leaders for the post planning stage.

4.13 Inference on post project era

Although in the previous chapter, I indicated that the SUDP is one of the government projects that received unprecedented preparation, the argument above demonstrates a short-sighted view with regard to addressing the issue of modern and traditional structures co-existing in the informal settlements. Since the studies conducted in preparation for the project pointed to the existence of the traditional leaders and the anticipated resistance, it is odd that no clear strategy was set out with regard to the post project era. It can be concluded that the project officials (City Council and Ministry of Housing), as well as the World Bank, were more concerned with getting the project implemented than with thinking about what might happen to the traditional leaders that had been governing the area. It is clear from the above discussion that the traditional leaders did work towards developing a sense of community and that they both controlled – and had a particular vision of – development in the area. The SUDP documents are clear with regard to the role that the residents will play after the project implementation, basically, they will be ratepayers and the City Council will be the primary authority. This suggests that the issue or fate of the traditional leaders was intentionally left to take a ‘natural course’ to avoid costs and contestation. The failure to develop a strategy for dealing with traditional leadership meant that the contestation ultimately and inevitably found its way into the project cycle as traditional leaders sought clarification on the issue of their authority. The consequences of this ‘missing link’ in the project are reflected in the exceedingly high costs and delays in implementation. These ‘unintended costs’ of the project suggest that governments in Africa need to consult with leaders and residents of informal settlements and to recognise that traditional authorities cannot simply be overlooked. Contestations over authority between the traditional and urban authorities are not unique to Swaziland. Ubink’s (2008) research in Kumasi, Ghana,

⁴² According to the urban regulations, Manzini City Council had all along been the authority ever since the area was gazetted urban, but not exercising the authority which made most residents believe the area was Swazi Nation Land thus paid tribute to the Senior Prince.

indicates for instance that the District Assembly and Land Commissions encounter challenges in planning, due to ‘uncooperative’ chiefs, who assume rights over land allocation and neglect planning standards. As is the case of Swaziland, Ghanaian urban authorities’ conviction is that the traditional authorities who violate urban regulations hamper urban planning. This chapter has further demonstrated, through the contestation that ensued under the SUDP, that the enactment of legislation does not guarantee authority in the absence of people’s acceptance of the institutions with the decision-making power (Jenkins 2001; Rakodi 2001; Sikor and Lund 2009; Lund 2011)

4.14 Conclusion

This chapter demonstrates that the long period in which traditional leaders have exercised control over the informal settlements gives them the grounds for resisting changes in the land tenure system. Since independence in 1968, the government has overlooked the presence of informal settlements. Thus, the existing traditional leaders deepened their roots on crown land and established themselves as recognised authorities on the informal settlements in peri-urban areas. The chapter explores the perceptions of traditional and modern authorities and their interactions around issues of authority, and argues that these notions of jurisdiction over informal settlements are diametrically opposed. As a result, harmonising them seems a great challenge. This explains why the government, after encountering initial resistance, had to intensely engage with the concerned traditional leaders during the implementation of the SUDP in Moneni. Swaziland’s traditional authorities have tended to view informal settlements as being on Swazi Nation Land regardless of the availability of the gazette declaring these areas urban and no longer supposed to be under their (the traditional leaders’) authority. In the case of Moneni, historical continuity with the land – as well as the failure to relocate the Royal Kraal when the areas were gazetted as urban – was seen as an important rationale for continued traditional rule. As one prince (key informant) argued ‘King Sobhuza II bought the land back from a British who had many farms and gave it to Prince Mshoshi I’ (interview 2009).

The interaction that took place between the modern and the traditional authorities under the SUDP demonstrates the contests over authority and power in Moneni informal settlements. The SUDP core pillars were central to the interaction process. These include the 99-year lease, plot allocation process, town planning standards and the cost recovery principle. The interaction dynamics in relation to these core pillars show the indigenous authorities’ resistance to the usurping of their authority. In contrast to the opening quote by Peter Takirambudde, which emphasises the power of traditional authorities, the SUDP makes it clear that this is not a process in which indigenous authority can be said to have

completely triumphed over ‘alien legal rule’. A number of sub-cases presented in the chapter help illuminate the interaction pathways followed by the modern and traditional authorities in addressing issues of jurisdiction. In contrast to Takirambudde’s claim that traditional authority has been able to repress and limit modern or ‘alien legal norms’, this chapter demonstrates a massively inconclusive process. In place of traditional authorities’ ‘triumph’, the case of the SUDP exposes endless deliberations that, above all, show the confusion that exists over the issue of authority in Moneni. Despite attempts to resolve the question of ultimate authority, and despite attempts to put the question on hold and to allow the project to proceed, it was clear that in 2010, neither Manzini City Council nor the traditional leadership commanded the full authority of the area. Traditional leaders had not been able to use their authority over the land as a basis of their power – precisely because of the changes in land title and the introduction of the 99-year lease, they have not been able to control state structures, and nor have they managed to assert their authority over city bureaucrats or technocrats. At the same time, city council officials have not been able to impose their authority on informal settlements, and have found their attempts to do so hampered by traditional leaders. The co-existence of the traditional and modern authorities in the informal settlements results in a myriad of contestations that cannot be easily resolved, which is evidence that claims involving customary tenure are the most difficult to solve because they are complicated by group dynamics and cultural rules (Gulyan and Basset 2007). These tensions leave informal settlement residents in a difficult position as they seek to negotiate between the opposing authorities in ways that will secure their continued residence in the area. From a development perspective it can be predicted that new interaction pathways might continue to emerge around the issue of jurisdiction over the informal settlements in the near future.

The contestation between the traditional and urban authorities impinged upon the realisation of the SUDP objectives and undermined the development planners’ assumptions. Such contestation occurring in other sub-Saharan African countries, attests to the fact that neglecting politics and local institutions in development planning is detrimental to development (Rakodi 2001; Robinson et al 2004; Williams et al 2009). Given the delays created by the traditional leaders and challenges over authority, the following chapter critically reviews the assumptions made by the development planners, in relation to the extent to which implementation of the SUDP actually took place and its impact on the residents.

Chapter Five: The effects of the Swaziland Urban Development Project on residents:

‘No development’

5.1 Introduction

This chapter is concerned with examining the impact of the Swaziland Urban Development Project (SUDP) on the residents of the informal settlements given the interplay of the authorities involved in managing urban land tenure systems. It does this through exploration of the assumptions of the development planners (project officials from Ministry of Housing and Urban Development (MHUD), City Councils and the World Bank) with regard to the benefits of the project. The effects that this chapter examines are those which were triggered by the interaction between the traditional and modern authorities. The underlying idea is to demonstrate the extent to which the contestation for authority over the area has impacted residents. The study does take cognizance of the fact that other effects of the SUDP would have occurred even without the interaction of these two categories of actors who were engaged in contestation over authority of the areas. Positive or negative effects, not emanating from the interaction are not the focus of this chapter (these include cracks in houses caused by the impact roller, poor drainage, reduction of pollution, reduction of crime as a result of street lights and a good transportation network). The chapter demonstrates that, notwithstanding the development planners’ assumptions, the project had limited positive effects on the residents of Swaziland’s informal settlements and this was further complicated by the ambiguous interaction of the traditional and modern authorities over the issue of jurisdiction of the area, as analysed in Chapter Four of this thesis. In order to best demonstrate the effects of the tenure system and of the SUDP, I also draw from the implementation of the SUDP in Msunduzi informal settlements located in Mbabane city. Here the SUDP was implemented, with less delays and frustrations than those experienced in Moneni, and completed in 2004.

Beginning with Moneni, the statements below capture some of the frustrations of Moneni residents:

‘There is a problem here in Moneni. The problem is that we do not know whether we are under [the] City Council or [the] Chief’.

‘We have been told that [the] City Council will provide a truck to ferry those who cannot afford the plot price to a destiny of their choice and we are worried because we do not know where to go’.

‘The whole thing (SUDP) causes confusion in Moneni’.

'There is no development in this area'.

'What development is there? Is it the road and the cracks in our houses?'

The above statements lay the foundation for Chapter Five's investigation of how the SUDP has affected informal settlement residents. They give a glimpse into how most of the residents of the informal settlements feel about the SUDP and the modernisation of tenure - which was part of the SUDP's strategy to improve residents' security of tenure. Ironically, however, despite all the investments and attempts to practice good development principles such as inclusivity and participation, by 2010, most Moneni residents were convinced that the project had not transformed their living standards. The SUDP was concerned with the installation of physical infrastructure such as water, sewer lines, roads, drainage and electricity and the provision of secure tenure. As discussed in previous chapters, the introduction of the 99-year lease invoked a web of interaction between traditional and urban authorities emanating from their competition and desire for control and authority. The interaction was primarily amongst traditional leaders, the Manzini City Council and the MHUD. During the lifetime of the SUDP, both authorities invoked the King's name to put pressure on each other to conform and asserted their authority over the informal settlements.

In 2010, the print media began carrying articles on the 'Moneni land saga' and emphasising that the SUDP was depriving residents of rights to their land (The Times of Swaziland, 14 July 2010). For instance one writer argued 'in the process that is taking place at Moneni, not only material wastes are to be removed, even the poor working class is to be discarded from the society' (The Times of Swaziland, July 2010). He stated he feared that the working class would become a '*KaMdodi* generation', meaning they would become 'scavengers without land'. These views were echoed in less public forums, for instance one government bureaucrat questioned the 99-year lease, asking 'What is the use of giving a car to a person who cannot drive' (interview 2010)?

The SUDP and the 99-year lease were implemented together, making it almost impossible to separate the impact of each of these processes. The lease was intended to lead to better investment in land by way of developing it and also to enable the holder to use Swazi National Land as collateral for loans from financial institutions. This should then provide holders with a sense of belonging and attachment to the land that, in turn, encourages them to make improvements that suit their needs, ensures that land usage is clearly defined and facilitates easy administration. Ultimately, this enables the title holder to have autonomy over property usage.

Even informal settlement residents could not distinguish between the SUDP and 99-year lease. The plot allocation process,⁴³ resettlement and compensation process and even the building ban (implemented in 1992 in preparation for the SUDP and discussed in Chapter Three) centered on the 99-year lease. For this reason, I approach the effects of the interaction of the traditional and modern authorities on residents of informal settlements through the lens of assumptions that the Development Planners had about the SUDP and the 99-year lease. The advantage of this approach is that it enables the exploration of what had been planned or assumed at the project planning stage as compared to the ultimate effect on affected residents. The discussion explores what really happened on the ground. The assumptions interrogated in this chapter are those of the MHUD, the Manzini and Mbabane City Councils (which control Moneni and Msunduzi respectively) and the World Bank. Information is drawn from project documents prepared by the MHUD with the assistance of the World Bank, City Council reports and minutes of project meetings. These assumptions were also verbally expressed by most City Council and Government officials during the interviews.

5.2 The success of the SUDP under examination

In 2000, the SUDP was awarded a Social Development Award by the Social Development Department of the World Bank for having developed land ownership policies to benefit the poor and for having facilitated residents' participation through the formation of project outreach facilitators⁴⁴ (MHUD 2000). The World Bank Regional Vice President also praised the MHUD for the strong community ownership of the project. The final report on the SUDP Evaluation, prepared by a consultant hired by the MUHD also indicates that:

...the biggest success of SUDP is that several reforms and policies that were developed were incorporated in the new Constitution or in laws that are being enacted and or rationalized in terms of the Constitution (SUDP Evaluation Final Report 2008: 31)

⁴³ The MHUD prepared an Allocation Policy to guide the plot allocation process in the SUDP project areas and, subsequently, an Allocation Criteria and Procedure. The Plot Allocation Committee consisted of MHUD, City Council and seven representatives from affected areas. In Moneni, the Senior Prince appointed these representatives.

⁴⁴ Ten community members were either appointed to act as information dissemination agents between the community and the project.

This SUDP Evaluation Report indicates that the SUDP has improved the living standards of the affected communities. This was supported by a City Engineer who said:

‘For Swaziland it was a God-sent benefit because there were a lot of improvements injected through the urban development project’.

This statement demonstrates the development planners’ conviction that the SUDP benefited the residents of informal settlements and contradicts the residents’ argument that ‘no development’ has taken place. The opinion of the Engineer is important because he was part of the SUDP planning team and reflects the lens through which most planners assess the impact of the project. The confidence displayed by these formal actors is indicative of the conventional approach to urban planning – which concerns itself with bringing order and controlled development, whilst relegating to secondary importance the actual needs of the communities (Brown 2006). The SUDP case illustrates this exact point; in spite of all the positive statements made by the urban authorities, most residents of the affected informal settlements believed that the SUDP did not make a positive impact. It seems that the expensive infrastructure – which included roads, sewer lines, bulk water supply and electricity, and high mast lights with a total cost of more than 12 million Emalangeni (E12.5M) – produced limited positive effects. Instead, these plans and development standards - and the assumptions that created them – are the very cause for concern in urban development.

A discussion of the development planners’ assumptions in this chapter will reveal that for many government actors undertaking the SUDP was driven not by a commitment to improve informal settlement residents’ living standards, but mainly by the intent to make ‘Moneni beautiful’; basically to enhance the aesthetic of the area. As discussed in previous chapters, there have long been concerns to improve Moneni. As discussions about the SUDP were initiated, statements made by different politicians during tours of the informal settlements placed emphasis on the need to plan the area since it is conspicuously situated, being the first site noticed by tourists entering Manzini city (minutes, key informants 2009). There was therefore pressure from the highest authorities – from some parliamentarians and cabinet ministers – to get the project implemented. Thus, in contrast to the UN-HABITAT’s emphasis on development, it could be argued that for many urban authorities the primary goal of planning slums was not purely to improve the living standards of the residents. Indeed, it is not uncommon for wealthier sections of society to feel uncomfortable about the presence of slums and substandard living conditions within their city and lobby for the installation of minimum standards of service (Martin and Mathema 2006).

This chapter examines the assumptions that:

- the relevant City Council would control development and act as the authority of the informal settlement.
- the 99-year lease would provide security of tenure, which includes the use of the land title as collateral in financial institutions, and encourages title holders to develop the land without fear of eviction.
- compensation paid in lieu of destroyed properties will help residents restore their lives and make them better off.
- the plot allocation process will benefit residents of the informal settlement in that, according to the allocation policy, only residents from the project area were eligible for allocation.
- the assumption that there would be residents' participation in SUDP as per World Bank condition of the loan.
- the assumption that infrastructure in Moneni would improve living standards of residents.

5.3 The assumption that City Councils would be the authority in the area and control development in the informal settlements

The basis for this assumption was that the MHUD and the City Councils are mandated by statutory law (the Urban Government Act of 1969, Peri-Urban Growth Policy of 1997, and the Swaziland Physical Planning Policy of 1999) to administer urban land, and monitor housing and urban development in general. The MHUD thus had a claim over jurisdictional matters of the Moneni area. However, as is clear from preceding chapters, this assumption was tested at the outset of the project.

The Ministry of Housing in partnership with the Manzini and Mbabane City Councils introduced the building ban in the informal settlements of Manzini and Mbabane cities to limit the growth of the informal settlements in preparation for planning the areas. Passed in 1992, it served as a preparatory measure for the SUDP. Prior to 1992, it was possible for most people to believe that the City Council played no role in their lives and had no authority over them. However, in 1992, most residents who had always believed they were under the jurisdiction of traditional leaders, realised that their status as followers of the traditional leaders was complicated by their urban location. Before declaration of the area as urban, there is little evidence that Prince Mshoshi had ever been engaged in any formal talks with either the then Ministry of Local Government and Administration or the City Council about the issue of planning the informal settlements and the authority of the City Council. The building ban was prepared in

the form of notices run in the print media, placed on City Councils' notice board, and put up in conspicuous areas within the informal settlements of Mbabane and Manzini. The introduction of the building ban had two main purposes:

- (a) to displace any informal authority that had been distributing land and assert City Councils' authority over the informal settlements as 'government wings' at urban local levels.
- (b) to reduce compensation costs through restricting construction of new structures until such time that the area is planned. To ensure this restriction, the MHUD conducted an aerial survey of the informal settlements involved in the urban development project in 1993 to capture the existing homesteads. The information would also be used for physical planning and engineering design preparations and as baseline data. The City Councils, as an arm of the ministry at a regional level, were expected to enforce the building ban. Any defiance of the building ban would result in relocation without compensation when the SUDP got implemented and should the person be affected by the project.

The paragraphs below analyses the effects of the building ban on both stakeholders (residents and traditional leaders). The delay in project implementation by ten years meant a delay in lifting the building ban and therefore great inconvenience to the residents.

The traditional leaders asserted that they were the authority responsible for land administration in Moneni and not the City Council; hence, they did not expect instructions from the Council (Key informants 2010; personal information). Traditional leaders continued to allocate land to new settlers, in open defiance of the building ban, so new structures mushroomed. The City Council was unable to effectively stamp its authority over these informal settlements, and its authority was thus unevenly felt. Even City Council officials' efforts to stop construction activity, through regular inspection of the area and issuance of notices to violators, were thwarted⁴⁵ by the residents of Moneni who opposed the presence of urban officials in the informal settlement. Thus, people managed to continue to build, and

⁴⁵ Some residents threatened them with violence (Manzini City Council 2003), and declared that they did not want to see a Council vehicle passing through the area. Council officials therefore failed to monitor building developments in the area.

these were especially people who were new to the area and who had been allocated land by the traditional leaders or a few who were powerful in a political⁴⁶ or economic sense.

Nonetheless, others did obey the building ban which greatly inconvenienced a large number of residents as they were deprived of the opportunity to develop their land. For instance, the focus groups in Moneni expressed their disgust at the manner they were kept in limbo by the MHUD and City Council (Focus Group 2009). Residents explained that, because the ban had been in effect for nearly 20 years, children who were young at the time of the introduction of the ban had grown up and now needed to have separate rooms. As a result, adult sons were forced to rent houses at an extra cost, and this greatly inconvenienced them. Prior to the building ban, informal settlement residents would build additional rooms when their sons reached puberty. With the building ban, residents were unable to address all these housing needs for their families.

The building ban, in effect, also blocked people's aspirations to build better houses. For example, one young man who participated in a focus group discussion said: 'I used to wonder why my parents did not build permanent brick houses and one day I asked my father who told me City Council stopped them'. His opinion matters because he represented the youth who felt they had been negatively affected by the project and by their inability to build suitable accommodation for themselves. This is not the only case where residents had the financial resources to build modern permanent houses but could not make the investment due to the building ban. Other participants in the household survey (discussed in detail in Chapter One), when asked whether any conditions were stipulated when Prince Mshoshi granted them permission to settle, said that they were told not to build any permanent structures, and instead to build temporary structures or *emalawu*.⁴⁷ Clearly, this state of limbo was very costly in that some people failed to build proper houses while economically active and financially capable, thus failing to fulfill their dreams of securing an improved standard of living for themselves and their children.

During the transect walk, residents showed me their incomplete residential houses. Most of these buildings looked old, derelict and covered by vegetation. The building ban, coupled with their inability to

⁴⁶ Among the people who violated the building ban was a City Councillor who built a string of rental structures as recently as 2007.

⁴⁷ *Lilawu* (singular) is a herd boy's hut, although used more recently as bachelor accommodation (see Prinz 1976). In Moneni, the Prince was cognisant of the fact that most of the people wanted a place to live so that they could be closer to their work places. Such people would return to their rural homes during weekends; therefore the *emalawu* would only accommodate the migrant.

repair or upgrade their homes, and the stalled building projects, kept the residents of informal settlements in limbo for many years. This, in turn, led two male participants to comment that the SUDP was, in effect, ‘underdevelopment’. This view is in sharp contrast to the planners’ assumption that the project has improved the residents’ living conditions. In Moneni, the building ban is still in place due to the fact that the project is still not complete and plot allocations in particular are ongoing.⁴⁸ The failure to develop a strategy for dealing with traditional leadership meant that the contestation ultimately and inevitably found its way into the project cycle as traditional leaders sought clarification on the issue of their authority. The delay in project implementation as a result of the contestation resulted in increased project costs and subsequently increased plot prices. What took place in Moneni is antagonistic to the assumptions that the City Council would be in control and limit unplanned development through enforcement of urban regulations. This too is the case in relation to the introduction 99-year lease which is discussed in the following sections.

5.4 The assumption that the 99-year lease would improve security of tenure and that plots would be affordable to residents of the informal settlements

The introduction of the 99-year lease in areas which had been previously administered by customary tenure regimes coupled with the introduction of a new authority in the area, namely, the City Council was another source of tension between the traditional and urban authorities. The 99-year lease implied a shift or reduction of the traditional authority, not only over the area but also over the residents. The traditional leaders strove to retain their hegemony over the subjects. The fieldwork data (minutes, key informants 2009) indicates that in the case of Moneni, this change of tenure sparked interaction between the traditional and modern authorities, with the former resisting the new form of tenure under the guise of protecting the residents. The interaction revolved not only around the issue of authority discussed above, but also around traditional leaders stressing the inappropriateness of the 99-year lease in terms of affordability. Even the Senior Prince singled it out as the main problem, emphasising his concern that residents could not afford the plots made available by the 99-year leasehold. On the contrary, the Government considered the 99-year lease to be a hybrid of the Swazi National Land and Freehold land that would help retain Swazi cultural values and be affordable (MHUD 1993; DeGroot and Lowsby

⁴⁸ Although the building ban was lifted in Msunduzi in the early 2000, as soon as residents got allocated plots and fulfilled the requirements for lifting the building ban.

2007). The rationale given was that it would serve as a deterrent to landlessness, especially of the poor who could not afford freehold land.

Development planners were also of the view that, under the 99-year leasehold, the land itself is not sold and that only the cost of the infrastructure had to be paid for by plot owners (SUDP Facts Sheet 1993; Plot Allocation Policy 1994; Plot Pricing Policy 1994). The underlying assumption was that this would allow residents security of tenure without having to pay the market value for land. However, as the costs are far higher than the *Khonta* fee that residents had previously paid to secure access to Swazi Nation Land, these still involved economic considerations. Indeed, for many residents, the cost of infrastructure was seen as tantamount to selling the land and they commented:

'I do not have money to buy the plot'

'They should provide an alternative for those who are poor'

'I wish we were given land for relocation'

'Now everything has to be paid for'

(Household survey 2009)

These economic factors influenced their decisions and standards of living. Even though the infrastructure costs expected to be paid by the residents were far lower than the actual property value of the land, they still considered themselves to be paying for the land. Whereas none of the people who failed to pay the plot price in Msunduzi have been evicted so far, in Moneni it is yet to be seen what will happen as the allocation process is still ongoing. It is no coincidence that the development planners even failed to come up with an alternative term for what they considered to be costs of infrastructure, thus they retained the term 'plot price' which I think fits well, because – as far as the residents were concerned – indeed it is the cost of the plot that they are paying for. Overall, the introduction of the 99-year lease did not produce the results projected by the development planners. Instead, it had, to some extent, an adverse impact on the residents of the informal settlements and these include creating a state of limbo in the community as portrayed in the previous discussions.

The 99-year lease also resulted in uncertainty on the part of the traditional leaders who regarded themselves as the rightful authority and this then led them to take mainly two actions:

- (a) A refusal to comply with certain urban policies and standards that seemed to disregard their interests and needs, which included the building ban discussed above and town planning

standards requiring that residents seek permission from the City Council before embarking on any form of development. Such an attitude brought about conflict which unfortunately spilt over to the residents who found themselves torn between the two authorities, and this created considerable confusion.

- (b) The traditional leaders arranged community meetings to affirm their authority over the residents in which they insisted that the area is Swazi Nation Land and under their authority. This is where they dismissed the Council's authority and informed residents to report to them any anomaly or correspondence received from City Council. At these meetings the residents got a chance to express their views regarding the issue that they were most resentful of to the City Council; citing the plot price and rates in particular as their concern. In this way, the introduction of the 99-year lease also made the residents quite uncertain about their future.

Insecurity and uncertainty

Contrary to the assumption of the MHUD that the 99-year lease would offer residents additional security of tenure, the SUDP resulted in many poor residents becoming even more insecure. Titling creates new uncertainties for those categories of people that rely on customary tenure (Platteau 1996). There are many reasons why the City Councils in Swaziland to have a reputation for auctioning the properties of local rate payers who have defaulted on payment of their rates over a long time. Consequently, certain residents were not only wary of the plot price but also of the rates which would have to be paid annually, arguing that they could not afford the rates and therefore might ultimately be rendered landless. More than 80 per cent of the residents, when asked what they did not like about the SUDP, cited rates (survey 2009). Below are some of the residents' statements:

'we do not want the City Council in Moneni'

'rates are expensive'

'we do not want to pay rates'

'the [S]UDP is not for poor people like us who cannot afford to pay rates'

As indicated in these quotes, the fact is that, regardless of having previously had no title to the land, residents still considered themselves secure under customary land tenure and living in informal settlements, which raises the question of perceptions in land ownership. It is abundantly clear that the privatisation of customary land tenure in Africa operates to the disadvantage of the poorest groups in the

society (Lastarria-Cornhiel 1997; Platteau 2000; Moyo 2005). Those residents of Moneni – particularly women⁴⁹ – who, for instance, had followed the *Khonta* system (settling process) and paid a *Khonta* fee, now found that under the SUDP they also had to pay the plot price and, thereafter, annual rates. During a focus group discussion, they expressed their dissatisfaction, commenting:

'We prefer to be under the chief because even when we are dead our children will be taken care of by the Umphakatsi (Royal Kraal). The Umphakatsi knows its people'.

'I am affected because I have children, and my husband has died. Even if I were to be given another plot to settle, who would build for me?'

The main reason for charging a plot price was that the SUDP was based on the principle of full cost recovery, meaning that project costs should be recovered and be used in replicating upgrading projects in other areas. This is in keeping with the World Bank's⁵⁰ involvement in issues of urban poverty and promotion of the principles of cost recovery, affordability and replicability (Rakodi 1997; Werlin 1999). In essence, in the SUDP areas, there was a high degree of dissatisfaction with the 99-year lease, the accompanying plot price and the annual rates, and poorer people tended to be more inclined to support the customary tenure system. At the same time and as demonstrated above, the SUDP itself created systems which stopped people from investing in housing and which, ironically and contrary to expectations, undermined their security of tenure.

The interaction between the traditional leaders and the urban authorities which stalled the project for more than a decade led to escalation of the project costs, therefore, the initial project costs had to be reviewed and adjusted according to the current price of goods. The increase in the price was exacerbated by the upgrading of the engineering design to include the sewer line which the traditional leaders and Manzini City Council insisted should be included. Although to date the plot price in Moneni has not been finalised because the project is still not complete, a City Council estimation based on the total project costs is that average plot price in Moneni is unlikely to be less than twenty thousand Emalangeni (£2,000-00). During the period of conducting the household survey almost all residents emphasised that they could not afford this plot price.

⁴⁹ An in-depth analysis of the effects of the project on women is provided in Chapter Six.

⁵⁰ Most of the World Bank funded projects were planned on the assumption that low- to moderate-income households could spend 20 to 25 per cent of their incomes on housing and related services (Mayo and Gross 1985).

The case of Msunduza, in the City of Mbabane, provides a useful illustration of the issue of non-affordability because, although the plots were allocated more than five years ago (2004) and although the plot prices were considerably cheaper than in Moneni (some costing less than £500 each), only 10 per cent of residents had managed to secure the 99-year lease title by 2010. Some residents were still paying-off the plot price in small installments and some had not started. Table 5.1 below is an indication of the payment status of residents of the informal settlement of Msunduza.

Table 5.1: Records of Msunduza plot price payment

Status	No. of people who had paid	Clarification	Percentage of Total:
No payment	309	These people have not paid anything and therefore do not have a deed of sale or lease.	26.4%
Commitment fee	280	Commitment was E400-00 and it also served as part of the deposit.	23.9%
Part payment –	422	These people have only made a part payment and most of them had made an arrangement to pay monthly but were not able to maintain these commitments.	36%
Full payment	161	Because they paid in full, these residents have been granted the 99-year lease title	13.7%

Source: Swaziland National Housing Board 2010

The slow pace at which residents were paying the plot price negates the assumption about cost recovery. The Final Report on SUDP Evaluation noted that ‘the principle of cost recovery was not enforced in terms of the overall project plan. As a result the revolving fund concept could not be put into practice’ (MHUD 2008: 35). The situation also challenges the notion of affordability propounded by the development planners as well as the assumption that – as cost recovery is difficult to attain in most developing countries – participants need to be made to understand what they are paying for and the nature of their obligation (Sanyal 1985). As is evident from the above discussions, this was clearly not the case in Moneni where people thought – with good reason – that they were paying for land which they had already ‘paid’ for through the khonta system and that this payment would not increase their security of land tenure.

The middle or high income residents of the informal settlements were mainly the ones who favored the 99-year lease. There is evidence that, during the stalling of the project, professionals with ties to Moneni regularly approached the City Council's planning department to find out how and when plots would be allocated and even lambasted the Council for being lenient with the traditional leaders' resistance to accept the council's authority. Nevertheless, with the exception of this minority that looked forward to the plot allocation exercise, the majority of the residents were not happy with the privatisation of tenure. The uncertainty about the jurisdiction of the area made it increasingly difficult for residents to make any meaningful investment in the land as they were not confident about the future decisions to be made about the area.

Confusion

The involvement of the City Council in the informal settlements tended to compromise the traditional authority that had been respected for many years. Residents found themselves trapped between the two authorities, with both sets of actors operating from different legal parameters and asserting their authority. Residents of Moneni argued that the project had brought 'confusion'. The interaction between authorities did not take place in a vacuum but impacted on the lives of the residents. In the case of Moneni, with the introduction of the SUDP, most residents were no longer clear about who the rightful authority in the area was. The degree of confusion was particularly evident in the following areas:

- (a) The traditional leaders told residents that the area is not under the jurisdiction of the Manzini City Council, but then Manzini City Council was on the site with the consultants surveying and with contractors putting the infrastructure in place. These therefore confused residents as they wondered what would be their ultimate fate in terms of land ownership.
- (b) Despite of the claim that traditional leaders made regarding being the authority in the area, they participated in the plot allocation process, which is part of the privatisation process chaired by the Ministry of Housing and Urban Development, with the much-resented City Council being the Secretariat of the Committee. This sent out contradictory information and caused even more confusion to the residents. As one resident put it in an interview in 2009, 'we think City Council has taken over but our leaders insist we are not under City Council' (interview 2009).
- (c) Residents who had some of their land taken away for local infrastructure (such as roads) experienced new cracks in their houses and other project-related complaints. When they reported these to the traditional leaders, the traditional leaders would refer them to the City Council. This certainly is contradictory and sent out confusing messages. When the City Council did not

address the complaints on time or at all, residents became frustrated as they were in limbo as to who the actual responsible agency was. Consequently, residents found themselves seeking help from different institutions which wasted not only their time but also resources as some of these were in other towns.

- (d) The fact that members of the Moneni Steering Committee are also members of the Inner Council confused and frustrated residents in that, when they want to appeal against the Moneni Steering Committee to the Senior Prince and Inner Council, they find the same people they want to appeal against, sitting with the Senior Prince. As a result no favourable decisions have been taken regarding their complaints or appeals (interview 2009).
- (e) Although the data shows that 90 per cent of the residents recognise the traditional authority, 5 per cent of the residents recognise the City Council and 5 per cent said no one. The household survey also portrays the confusion in the area, regarding whom they approach to get permission to build a new house currently. For instance, 64 per cent responded that they get permission to build from the traditional leaders whereas 22 per cent said from the City Council and 14 per cent said from no one, meaning, they build without permission.

The Councilor of Moneni lamented that out of all the twelve wards in Manzini, Moneni is the only ward in Manzini with a traditional structure involved in urban development issues and permitted to compete with the Councillor in urban development issues. On the one hand, the residents who elected him consult with him on urban development matters but he tells them he is not involved, which confuses the residents and defeats the purpose of being a Councillor. The traditional leaders of Moneni insisted that he should be excluded from the Plot Allocation process; this was despite several explanations by the urban authorities about his role as a councilor representing the residents in Council matters. Due to the fact that the urban authorities were wary of causing the project to stall again by upsetting the traditional leaders, the Councillor was left out. He did though receive feed back through reports about the SUDP to Council from the planning department monthly. On the other hand, he is also frustrated by the situation, as he is not recognised by the traditional leaders who have insisted it is not necessary that he get involved in the Moneni Steering committee (interview 2009).

What is evident is that all actors are using both the traditional and modern legal systems to get their concerns and complaints resolved. Residents' actions, which stem most often out of frustration, show how they drew from both of these systems. Some aggrieved residents, who were not satisfied with the response of either the Moneni Inner Council or Manzini City Council, took their cases to the Ministry of Housing and Urban Development or to the Ndobazabantu Office in the Regional Administrator's office,

to the Swazi National Court and others to the Traditional Governor, which is the King's Advisory Board. Ndazababantu is an office that falls within the Regional Administrator's office and deals with chieftaincy disputes, with many other individual conflicts between residents and sometimes with conflicts between Chiefs and their Inner Councils. Once the Ndazababantu fails to mediate, he refers the dispute to the Regional Administrator (Rose 1992; UNDP 2010). In the case of defiance or a disrespectful resident, the Headman (*Indvuna*) reports the issue to Ndabazabantu. If Ndabazabantu fails, the issue is then referred to the Swazi National Court. However, people can also lodge cases with the Swazi National Court without having to see the Ndabazabantu. The Swazi National Court⁵¹ only deals with unwritten Swazi law and custom which explains why some aggrieved residents appealed to it when they felt deprived of compensation for their SUDP-affected property. The regional administrator got involved in the interaction as a result of his similar mandate to provide mediation on customary-related issues such as Swazi nation land. Since the informal settlement of Moneni has the traditional structure detailed above and land had been administered as customary land, some aggrieved residents lodged their complaints with the traditional leaders. Their involvement in mediating on issues of land tenure and compensation in Moneni, therefore justifies the interaction that occurred under the SUDP.

Also involved in dealing with unwritten Swazi law and custom is the Great *Indvuna* (Royal Governor). The Great *Indvuna* is an important official in the traditional structure of Swaziland. Swazis believe that a King has to have an *indvuna* (Councillor), therefore for every reign an *Indvuna* is appointed (Kuper 1963). The *Indvuna* is based at the Headquarters of the Royal village, Lobamba. He 'hears cases, announces court judgments, advises on the temper of the people and acts as their representatives' (Kuper 1963: 33). He has to be a person who displays respect for people. Due to the nature of his job which can be summed up as being mainly in charge of customary issues, Swazis sometimes refer to him as a traditional Prime Minister. The disputes over compensation issues in Moneni, led other residents such as Langa to approach the Royal Governor and to seek an audience with the Likoqo Advisory Council. Even the Senior Prince of Moneni did meet with him and the Likoqo,⁵² a King's Advisory Council to discuss

⁵¹ The National Court is established by Swazi Court Act of 1950. Section 7 focuses on service jurisdiction (Swazi Court Act 1950, key informant 2010) e.g. customary marriage and Swazi Nation land related disputes.

⁵² Likoqo traditionally advises iNgwenyama on disputes in connection with the selection of tikhulu (chiefs) boundaries of chiefdoms and any other matter iNgwenyama may assign for their advice in confidence (Swaziland Constitution 2005; Section 231,3)

the issue of authority in Moneni (key informants 2009,⁵³ 2010). Consequently, the Royal Governor and the King's Advisory Council participated in the interaction between the traditional and urban local authorities as mediators.

The involvement of these diverse institutions is an indication of the role of the state in formulating legislation but also in adjudicating conflicts; these functions make the modern state a key actor in land tenure systems (Barracough, 1999). As is the case in other sub-Saharan countries, these institutions were created by the colonial administration (Ministry of Tinkhundla Administration and Development 2003) to maintain political order and administration favorable to their commercial interests (Scott 1998; Williams et al 2009). Furthermore, the involvement of the Swazi Nation Court, the Regional Administrator and the High court in land disputes depicts the conflicting role of the state as custodians of both customary and statutory laws. This explains why aggrieved residents were able to seek favorable responses from all of them. The case of a husband, Makhubu, who felt that the compensation for his vegetation was wrongfully paid out to his wife, provides a good example of the residents' search for intervention from both traditional and urban adjudicating authorities. Makhubu lodged his complaint sequentially with the following authority figures: the headman of Moneni, the City Council, the Moneni Steering Committee that sits on the Plot Allocation Committee, the Senior Prince, the Swazi Nation Court, the Ministry of Housing and Urban Development, and the High Court. The case is currently with the High Court as he failed to get a favourable response from all the other actors (see Appendix 5 for a summary of the case). The confusion about whom to approach and how to seek redress also played out across class divides in the Moneni area and this forms the focus of the following discussions.

Divisions between rich and the poor in Moneni

There tended to be division in terms of opinion between those who could afford the plot price and those who could not. The affording class – which was mainly those who had secure jobs or businesses or had children who could help them financially – favoured the City Council and desired to see the SUDP implemented. This small group even avoided attending community meetings arguing that paying tribute to the senior prince has been cancelled by the involvement of the city council. This was made particularly clear by one resident who said: 'I cannot pay rates and also pay tribute to a chief' meaning that he no

⁵³ Acting Royal Governor 2010, Senior Prince of Moneni 2010, Ministry of Housing and City Council officials, Residents.

longer had an obligation to respect the chief. Residents said that they got threats to the effect that if they did not attend community meetings called by chiefs, then they might not get these traditional leaders' services when needed such as during applications for marriage certificates, scholarships, or to apply for certain funds provided by government departments. Such a threat therefore forced some residents to play it safe, that is attend community meetings and still show respect to the leaders even if they knew they preferred the City Council authority.

Residents also believed that the rich were given preferential treatment rather than the poor. The men's focus group mentioned that if a rich person's property or land had to be taken for infrastructure, the project did everything possible to avoid this and even redesigned the engineering plans. They gave the example of a project redesigning the road to avoid reducing a Prince's plot after he had rejected the proposal. This incident upset the residents because their fields had been taken away by the project and they had never received replacement land or the possibility of having the road redesigned to avoid their fields. In addition, they received no compensation for loss of uncultivated fields because the MHUD asserted that the land belonged to government and that they settled illegally (Focus group, interviews 2009, personal information).

The interaction between the traditional leaders and urban authorities also led to a division within the traditional leadership structure which was manifested on two levels: Firstly, two members of the Moneni Steering Committee who sat on the Plot Allocations Committee resigned because they felt their counterparts agreed with most of the principles that the urban authorities came up with and were thus not fairly representing the community. For instance, these two were totally against the City Council's involvement in the area and thus, rejected most aspects of the plot allocation criteria. Secondly, other members of the Community or the Chief's Inner Council, who did not form part of the Steering Committee that sat in Plot allocations, also withdrew their services from the Inner Council. One reason being that since the beginning of the project they were confused about the way the other traditional leaders do things. An illustration given was that the plot allocations process was nontransparent and lacked an adequate update from the Moneni Steering Committee.

The introduction of the new form of tenure also culminated in strategies embarked upon by both the residents and traditional leaders in response to the divisions and confusion explored above. The traditional leaders saw that the division in the area was intensifying, and devised a strategy to try and win the support of the majority: First, they sought to appease those residents who were normally vocal at community meetings and who criticised the traditional leaders approach to SUDP issues and to the 99-year lease. Some of these residents were appointed on the traditional Inner Council and two were

appointed as project outreach facilitators. This appointment saw an expansion of the traditional leadership to also comprise of young adults who were not members of royalty, unlike previously where the majority of the members were mature residents and members of the royal family. Two of the project outreach facilitators appointed were members of the Moneni Development Initiative (MDI) and of the Swaziland Youth Congress. This is a youth wing of the banned political party in Swaziland known as the People's United Democratic Movement which challenged the traditional leaders on the issue of land distribution and which had a critical insight into the urban authorities' operations.

Secondly, the traditional leaders, in conjunction with the Regional Administration Office and other Senior Princes, officially installed the Senior Prince as Chief in 2007 in a big community event in Moneni. Afterwards the traditional leaders of Moneni made preparations to build a royal kraal for the newly-installed Senior Prince of Moneni who had taken over when his father passed on. The traditional leaders, in consultation with the other princes of Moneni, identified a site and persuaded the Ministry of Works and Public Transport to grade the site despite its assertion that the area is government owned. This action attracted the attention of the neighbouring chief of ELwandle who believed the area falls under his jurisdiction and who sent messengers to stop the construction activity. This sparked a controversy which also drew the attention of influential princes/princesses who happened to have different views on the issue. There were those who believed the Moneni area is under the Chieftaincy of ELwandle therefore cannot have its own chief. They argued the Senior Prince was not appointed according to Swazi Custom to be chief but only to serve as a Senior Prince (key informants 2009). The traditional leaders, including the princes who facilitated the function, were questioned by the supreme traditionalists (King's office) on this issue and ultimately had to back down. This strategy – designed to symbolically reinforce the power of the traditional leaders – ultimately increased the residents' confusion about the status of the area as a result of the mixed messages sent out by these authorities.

Thirdly, Moneni traditional leaders⁵⁴ decided to allocate 70 pieces of land to new settlers, an act which blatantly contradicted the building ban and which was designed to assert their authority over land and conditions for tenure. Although, according to the traditional leaders, this was to raise funds with which to execute community duties and build a residence for the newly installed senior prince of Moneni,

⁵⁴ Other members of the Monei traditional leadership later disassociated themselves from this land distribution, alleging that the headman was the one who illegally allocated the land. The Senior Prince though admitted he approved of allocation of only a few plots, not seventy (key informants 2010). The headman was dismissed for this action.

the timing and the manner in which this was done demonstrates that the whole move was about the assertion of their authority in the area. This strategy had two effects:

(a) The residents who felt that land was being distributed to outsiders got frustrated because they felt that not only did current adults lack adequate land, but their children in the future would be deprived of land ownership in the area. As a resident of Moneni said ‘the land should have been allocated to residents who have small plots and should also be reserved for young people who will need to build their homes in the future’(key informant 2010).

(b) A new division ensued between the traditional leaders as some were against the idea of distributing the land. This discord meant that ultimately the new land allocations were blamed on the headman of the area who was relieved of his duties (see Chapter Four).

Instead of establishing the traditional leaders’ authority, the above strategies brought about more division in the area. This was not only between the headman, but also other members of the inner council who distanced themselves from the allocation of the 70 pieces of land. Some of these members were new to the committee and younger than the established committee members with different ideas about how SUDP issues should be addressed. This explains why when the headman was reinstated into the position of headman, he was reluctant to work with them saying that he had lost trust. Furthermore, the distribution of the land worsened the divisions between residents and the traditional leaders. The residents concluded that the leaders were not concerned with their wellbeing; rather they were enriching themselves through the sale of land at the expense of residents who have a land shortage. The youth of the area also got frustrated and resolved to protest through their association, the Moneni Development Initiative (MDI). These protests, linked to the plot allocation process, are discussed in the section which follows.

5.5 The assumption that the plot allocation process would be completed within the project life cycle and would benefit residents of the informal settlement.

The effects of the interaction between the traditional and modern authorities had a tremendous impact on the plot allocation process. As discussed in Chapter Four, the plot allocation stage tended to be a powerful vehicle that the traditional leaders used to control the process and continually assert their authority over the area. According to the plan, the plot allocation process would be implemented through a Plot Allocation Committee which was subject to the authority of the MHUD and City Councils. The plot allocation process became far more complicated than was anticipated. It transpired that it was not to be a straightforward process controlled by the MUHD or by the Plot allocation Committee. Instead, the

traditional leaders had a major stake and exerted significant control over the process. For example, the Senior Prince of Moneni withdrew, the services of the representatives of Moneni (i.e. the Moneni Steering Committee) participating in the Plot Allocations Committee, on three different occasions (in different years). He cited interference by the Manzini City Council as the main reason. His actions basically halted the plot allocation process. For instance in 2004, the senior Prince of Moneni, in a letter to the MHUD stated:

'The elders do not want the project to proceed' and also that 'the elders were all along hoping that the project would proceed with the City Council taking the role of taking charge of the development in the area and Not RUN THE AREA' (correspondence 2004, original emphasis).

Such events delayed the plot allocation exercise which made it impossible to complete it within the project cycle. To date, two years after completion of the installation of the infrastructure in 2009, the plot allocation process in Moneni is still pending. This delay adversely resulted in the increase in the project costs leading to an increase in the plot price which, in turn, had an adverse impact on the residents (discussed above). In addition, the delay meant that the building ban could not be lifted, as the condition for the lifting of the ban included issuance of title to residents. This hindered residents from investing in their properties. The residents who were interested in applying for commercial plots in the area could not embark on their planned businesses which also became an economic set back. The Plot Allocations Committee received written applications for commercial plots to operate businesses such as car washing, vending phone, brick-making, car repairing, sewing, hairdressing saloons, vegetable stalls (Plot allocation report, 2009). This was important for the residents because some of their businesses, especially market stalls, were destroyed in order to make way for infrastructure. Even though the owners were compensated, they said that the project had failed to allocate them replacement sites for many years and the compensation has been spent on other immediate needs. All this is evidence that business opportunities were delayed as a result of the interaction.

Furthermore, the plot allocation process was fraught with dissatisfaction as residents felt the project benefited only those residents with favorable economic status and sometimes non residents. This is clearly illustrated by the Moneni Development Initiative (MDI),⁵⁵ a Youth Association concerned that the younger generation was being overlooked by the SUDP (key informants 2009) and campaigning to have land reserved for them for future use. They formally lodged a petition detailing their grievances with the traditional leadership, the Manzini City Council and the MHUD and demanding that the latter come to address the community about the SUDP (correspondence 2009). In their petition, the Moneni Development Initiative stipulated that residents were not very clear about the allocation process and that residents had concluded that it was designed to exclude long standing residents. Certainly, the assumption that the plot allocation would be transparent was not realised. Despite the fact that the plot allocation list was advertised in the print media, that a number of community meetings were held and that project outreach facilitators were appointed, residents still felt that not enough information was provided. As was observed by one household owner: 'They should make the plots available and come and teach us about the project for people to understand what is going on' (survey 2010). Residents were advised to lodge their complaints with the Council but they had scanty information about the whole process. The main cause for the poor information dissemination could be linked to the restrictions that the traditional leaders put on City Council officials with regard to communicating with residents. City Council officials were not supposed to directly communicate with residents, but to go through either the traditional leadership itself or through community representatives appointed by these leaders (key informants, correspondence 2004). This was a means of reinforcing traditional leaders' authority, although the leaders themselves viewed it as a cushion against dissemination of contradictory information to residents. Even organising community meetings was a challenge, not only for the City Council, but for the MHUD as they had to depend on the traditional leaders for arrangements. This process of negotiation stemmed, in part, from the participatory requirements of the SUDP (see Chapter Three), but was magnified by the tensions and conflicts as traditional and modern authorities struggled for control over the SUDP and the area. Thus, for example, a letter written by the MHUD addressed to the Senior Prince of Moneni, Prince Mshoshi, reads: 'the

⁵⁵ The MDI organised a workshop which they called a *big indaba event*, held on 4 April 2009 to put pressure on the Chief's Inner Council to stop allocating land illegally and to be transparent about urban development issues. The discussions centered mainly on land issues and the SUDP. It was attended by approximately 300 people, mainly residents (MDI Chairperson 2010). The one day event received financial support from Skill Share International, Swaziland, while local companies provided food. International organisation and companies sent representatives to the event for observation purposes. A direct result from the Indaba event was the petition sent to MHUD, the Regional Administrator and City Council demanding.

Honorable Minister directs me to request for a mass meeting with the residents of Moneni to be held on Sunday 7 November 2004 at 10:00 at Moneni Royal Kraal'. Development Planners had not anticipated the restrictions that the traditional leaders placed on urban authorities and neither had they realised the power that these traditional leaders had over the plot allocation process. They assumed that because the land is government owned, the plot allocation process would be controlled by the MHUD which oversees government land within the urban boundary. The MHUD's attempts to assert its authority over Moneni is evident in its communication with the Moneni leadership as shown in a letter which reads:

...the issue of ownership of the land may be discussed later but it must be emphasized that it is government property. [The] Government has an obligation to ensure that the citizens own property and the eradication of slums by the year 2015 as per the United Nations resolution on slums throughout the world (10 May 2007).

Inadequate dissemination of information occurred in spite of the Moneni Steering committee's involvement in the Plot Allocations Committee; precisely because of the maneuverings by traditional leaders to retain control over the land and stay in power and because of the urban authorities' underlying incentives of beautification and modernisation. The Plot Allocations Committee – caught between these two factions – did not disseminate information to the satisfaction of the residents nor give regular updates on the project's progress (correspondence 2008; interview 2009). As one traditional leader of Moneni, who was not part of the Plot Allocations Committee, explained: 'the allocations committee provides vague explanations about the project (SUDP) especially with regard to the issue of plot allocation and therefore we fail to understand why one person is allocated five plots when others have no plots at all' (key informant 2009). If some members of the traditional leaders were unclear about the process, then worse could be expected on the part of ordinary residents.

As a result of the traditional leaders' control over communication with the residents, residents felt that the MHUD, together with Manzini City Council, had shunned them, which is the opposite of an early promise made by the project planners about transparency and directly opposed to the SUDP's initial intentions and this too negatively influenced community participation.

5.6 The assumption that compensation, paid in lieu of destroyed properties, would help affected residents restore their lives and make them better off.

The rationale behind this assumption stemmed from the involvement of the World Bank in the project, as the Bank obliged agencies to adhere to World Bank Directive 4.30 on Involuntary

Resettlement which requires agencies to prepare resettlement policies and plans. Under the SUDP, a resettlement policy and plan were compiled. Another stage of the compensation exercises was the compilation of an inventory by a Property Valuer (Assessor) employed by the Ministry of Housing and Urban Development, who was accompanied by a community leader. The idea behind the involvement of a local leader was so that he could assist in identifying owners of the properties that would be affected and needed to be compensated. The inventory of homesteads itself triggered a lot of criticism from residents of the informal settlements who blamed the Valuer and accused the traditional leaders of 'giving' their properties to other people. The process was always going to be difficult and flawed because of the complex nature of individual rights to customary land tenure such that land access and user rights at homestead level are derived from having membership in a particular homestead (Rose 1992; Moyo 2007; Lastarria-Cornhiel 2009). As Rose (1992) revealed, a (traditional) Swazi homestead is complex as it normally consists of households formed by sons and their wives and these sons and wives carry out different responsibilities. For instance, the homestead head 'determined resource allocation such as land distribution and made major decisions, regarding both production –and economic expenditures, and mobilized homestead labour' (Rose 1992: 29). Sons normally make an economic contribution to the sustenance of the family in that they build some houses. Indeed the study in Moneni found that some of the rented units were not owned by the heads of the households, but rather by their sons. A few long term tenants also played the role of landlords in other homesteads. For example, in one homestead, none of the representatives of the allocations committee knew or had ever seen its owner. It was alleged that the homestead harboured tenants. All these issues made the process of identifying owners of property very complicated, hence the numerous complaints about the compensation process. One area where the challenge was particularly difficult concerned those family members who already had non harmonious relationships.

Compensation-related tensions were generated within families (see Appendix 6 for an illustration) and between neighbours in the project areas, such as Moneni and Msunduzi, to the extent that a few resolved to pursue the court route, and this undermined efforts made by the residents to improve their standard of living. The primary source of the disputes between neighbours was the lack of clear plot boundaries and compensation. In the case of undeveloped land, residents' anger was directed to the project for the failure to provide compensation for land to residents who believed they had owned the land for many years. Although residents were compensated for crops, this was calculated at the current value of the crop, rather than on the basis of future harvests and a long-term ability to grow food and raise money. In addition, if, at the time of the census, there were no crops on the land, residents received no compensation despite the fact that they might have used the land to grow crops for food or despite their

future plans to do so. The SUDP's failure to provide compensation for undeveloped land and for the loss of future crops disregards the role of urban agriculture in urban development. Such practice overlooked that the availability of land for urban agriculture contributes to improved food security and to the nutritional status of the urban dwellers while also reducing reliance on export crops that tend to be unaffordable for the urban poor (Rakodi 1988; Tacoli 2006; Veenhuizen 2006). A different approach, which paid more attention to the potential of urban agriculture might therefore have improved – rather than frustrated – the economic potential of the SUDP and of Moneni's and Msunduza's residents. The benefits that accrue from agriculture explain why Sanyal (1985), unlike other urban theorists, concludes that cost recovery is not possible if agriculture is neglected.

Some residents' concern about compensation focused on the fact that the project took away their fields which, although not adequate in the first place, helped them financially as they grew certain crops to complement their income. Since the implementation of the SUDP, residents affected by infrastructure upgrading were instructed not to engage in crop production. These residents experienced a double disadvantage. Not only were their plots reduced in size to accommodate infrastructural development as they were told to resettle, they also were unable to receive compensation for crops as they were forbidden from cultivating land that had been earmarked for this purpose. Promoters of urban agriculture argue that development policies should incorporate urban agriculture as it is an integral part of urban development with many positive spin offs. As such, land use plans, financial institutions, credit policies, private sector and environmental policies should be included (Mougeot 2005; Minnis 2006; Veenhuizen 2006; FAO 2009). Yet, in the case of the SUDP, the fact that residents were not compensated for the lost field, and were only compensated for standing crops, was also a major economic setback to the residents because it implied no compensation was offered to those who had not planted any crops at the time of the valuation exercise. Even those residents, who were compensated for crops, found that the compensation amount cannot be compared with the amount of money they would have received if compensation for land was paid. The Ministry of Housing contended that the residents had settled illegally and therefore were not entitled to receive compensation.

The failure of the SUDP to include considerations of agriculture is not unusual. It is often the case that local authorities, planners in particular, do not integrate urban agriculture in land use planning policy as they normally associate it with negative effects on both the aesthetic and environmental conditions (Veenhuizen 2006; FAO 2009). As has been observed in most African countries, there is an absence of any legislative frameworks for urban agriculture (Veenhuizen 2006; FAO 2009). Swaziland too does not have any legislative frameworks for urban agriculture, although a draft policy has recently been prepared.

Another challenge encountered in implementing the resettlement and compensation plan was with regard to undeveloped land on which trees had seeded naturally or where there were old fruit trees whose ownership was not clear. For instance, guava trees thrive naturally in Manzini without cultivation and it became a problem when these trees were situated between two homesteads. Both homesteads claimed compensation and as such led to serious tensions between some neighbours.

Yet another source of tension between some families was that, after planning of the area, certain homesteads were subdivided into several plots, with some of the plots being allocated by the Allocations Committee to neighbours or to totally new people. The reason for this was that ‘existing informal plots were generally reduced in size to achieve the density targets and so households were compensated for any structures, fruit trees and crops falling outside the new boundary’ (Lowsby and De Groot 2007: 41). Where the affected plots had naturally-seeded fruit trees, the original owner often continued claiming ownership of the trees, even though he had already been compensated for it and had been informed that it no longer belonged to him.

This allocation of land to a neighbour or new resident created even more tension as previous landowners vowed that they would never allow the new allottees to use the land. The physical layout plans of the areas – drawn up in the initial stages of the SUPD – show some houses whose buildings overlap the plot boundaries, thus overlapping into their neighbours’ plot. In some cases, the new plot boundaries created this problem as houses – which were previously within plot boundaries – now overlapped into land allocated to neighbours. Although these houses were meant to be demolished, often the owner continued using the house, refusing to demolish it even though he or she had received compensation for it. This was clearly evident in Msunduzi where the project was implemented five years ago. During the field visit to Msunduzi, my assistant and I got to see at least two such cases, where all the houses were still being used by the initial owners in spite of the fact that, according to the compensation guidelines, they had to be demolished. On the one hand, new plot owners were inconvenienced by the reluctance of the house owners to demolish the houses. One of the new plot owners explained how this jeopardised his plans to develop the land. Enmity between such neighbours was very rife. On the other hand, previous plot owners also felt greatly deprived of their land which they had used for many years. Ironically, all the previous owners had accepted compensation for their houses. A more precarious situation resulted when an undeveloped piece of land, which was previously used by a certain individual, got allocated to another individual. This tended to be more of a problem because the previous owner received no compensation at all. For instance, in Msunduzi, one man explained how he made death threats to a new resident who had been allocated land that he considered to be within his plot. The original owner said he only made the threats to scare the new resident and indeed this new resident, who was

preparing to build, disappeared and has not returned. Another case comes from a young woman who inherited land with fruit trees from her parents. The City Council had taken the land away from her and allocated it to a new owner. She explained how she had stopped the men hired by the new plot owner from clearing the land. This is an interesting case in the sense that this young woman said she was prepared to fight physically for the land. This case demonstrates how residents value land and are ready to go an extra mile to retain it.

With regard to structures affected by the project, the SUDP offered cash compensation based on a valuation report. Residents were given a choice between receiving either cash or replacement houses and they all opted for the former. The choice given to the residents might be viewed from two perspectives. On the one hand, it did allow the participation of residents in the decision-making process, which is a positive move that protagonists of citizen engagement promote. On the other hand, the study found that the project development planners failed to consider the ramifications of such freedom and the difficulties of reinvesting cash into buildings and physical structures. In Moneni, for instance, six households were relocated and out of those only two had built replacement structures by June 2010, though compensated three years ago, in 2007. Three households still lived in temporary structures, whereas one relocated to a rural area, even though they had been allocated a replacement plot and monetary compensation to be used in building. The plots were still vacant and it remained to be seen if these new owners would, in the future, either develop or dispose them off as undeveloped plots.

In essence, the compensation process tended to be used by many diverse and different people to serve their different interests. It did not improve the residents' living conditions as is explicitly stated as a goal in World Bank Documents (World Bank Directive 4.10). Rather than focusing on the residents' livelihoods, Swaziland's urban authorities' attitudes show their concern for getting the city properly planned and beautiful. They are put under pressure by politicians to achieve this, which also threatens their job security. Through this compensation process, traditional leaders got the chance to establish their authority by determining who was eligible for compensation, whereas residents were determined to retain their land for their children and newcomers were opportunistically looking for chances to acquire land and perhaps make money. Empirical evidence from several African case studies shows that 'registration can create rather than reduce uncertainty and conflict over land rights' (Atwood 1990: 663). This was definitely the case in Moneni, despite, as the following section explores, attempts to encourage residents' participation in the SUDP.

5.7 The assumption that there would be residents' participation in SUDP as per the World Bank condition of the loan.

The mobilisation of the communities to actively participate in their development (MHUD 1993: s1) was one of the main objectives of the Urban Development Project. The traditional leaders' ability to dictate the terms on which urban authorities could meet with the community demonstrates the amount of authority the former still had in the area. Although traditional leaders have no legal rights to oversee the use of land in urban areas, as discussed in Chapter Four, the decision to work with traditional leaders was a compromise made by the urban authorities just to get the project implemented. Thus, the participation of the traditional leaders and their power to control interactions in Moneni, determined the nature of interactions between the urban authorities and the residents, undermining many of the SUDP's aims about constructive participation. Ironically, however, all these compromises and the delegation of some decision-making powers by the MHUD were made in order to meet participation objectives. Indeed, participation of the traditional leaders in the Plot allocation process demonstrates a significant compromise on the part of the urban authorities. It violated the stipulations in the Crown Land Disposal Act 1911, a legislation governing distribution of government-owned land. The traditional leaders were also involved in the formulation of certain policies such as the resettlement and compensation policy and plot allocation criteria. However, the only people who participated in such forums were the few traditional leaders (less than five) who represented the communities. There is no evidence that rigorous engagement with the residents was carried out, as only 62 per cent of the household survey participants said they knew about the project before implementation.

The SUDP planning documents, which include the MHUD Technical Report (1993: 3), indicate that 'any change in land tenure will affect the traditional authorities, the chiefs whose control over land is the pivot of their power and that the project planners need to actively engage with residents. This was, however, not possible due to the control exercised by the traditional leaders, as discussed above, which appeared almost at all levels of the projects. This kept the residents in a situation where they had little, and sometimes distorted information about the project. This was, in turn, the cause of even more uncertainty and confusion. The following residents' quotes provide examples of their distorted information:

'The Council will dispatch a truck to transport those who cannot afford plot price to a destiny of their choice' (Women's Focus group 2009)

'The City Council abused the project funds (bayidla imali) that are why the project started late' (Household survey 2009)

The study found that these perceptions were not accurate. Exacerbating the spread of distorted information to residents was the fact that traditional leaders only disseminated information that bolstered their reputation and portrayal of concerns for the residents. As a Councillor of Moneni commented, ‘the traditional leaders do not tell the people the truth that they are now under City Council’ and ‘neither does the City Council meet with the people to educate them’ (interview 2009).

The lack of citizen participation was not only a result of the traditional leaders’ control. Urban authorities in particular the MHUD and the Manzini City council did not embrace more radical strategies in enhancing community participation. For instance, when the MDI complained about lack of education about the SUDP, the Ministry and city council could have used this to convince the traditional leaders about the need to have a meeting meant to explain more about the SUDP and to embark on other educational exercises.

During the planning stage of the project, the community was not consulted to have any input to the project plan. Traditional leaders were initially invited to a workshop to be informed about the already-planned project and instructed to inform the community about the SUDP.⁵⁶ The residents’ suggestion to have a different version of development which they made through the traditional leaders could not be adopted by the Ministry of Housing and Urban Development because the ministry already had all the structures in place for its own version of development. The residents at a community meeting said that they wanted the ministry of housing to provide the entire infrastructure in the area without involving the city council in the development (minutes of meeting between the MHUD Minister and traditional leaders 1999). When asked who would carry out maintenance of the infrastructure the traditional leaders reported that the community would open a trust fund and all residents would contribute an agreed upon fee to it. The money would be used to pay for maintenance costs.

In order to enhance the education of residents, a project outreach facilitation structure was instituted as according to the original plan. The project outreach facilitators (POFs) were intended to disseminate information to residents about project issues and to act as a link between residents and the project team. Unlike in Msunduzi informal settlements, where the POFs were elected by the community, in Moneni they were appointed by the traditional leaders. These POFs were not accepted by other

⁵⁶ The developer at the time, the Swaziland National Housing Board in conjunction with the MHUD organised community meetings through the traditional leaders which turned unpleasant as residents dismissed the City Council’s involvement in the area.

community members who saw them as favorites of the traditional leaders. In particular, the ‘progressive’ residents who called for a change in the traditional governance system, did not seem impressed by the traditional leaders and were quite resentful towards these POFs. Paradoxically, two POFs were themselves members of progressive associations⁵⁷ and were not necessarily supportive of the traditional leaders’ authority. This created a situation in which POFs found it very difficult to encourage community participation. For instance, one of them argued: ‘I do not feel comfortable with carrying out the task because I have not been elected by the community, hence I cannot fully represent them’ (interview 2009).

Under the circumstances, the POFs avoided visiting and discussing project matters with other families especially those known to be anti-traditional leadership; thus the latter were deprived of information. The POFs claimed they sometimes received insults from other community members because of the work they were asked to do. The resentment that the pofs suffered worsened when the residents realised that they would have to pay the plot price to secure the 99-year lease for land which they believed they already ‘owned’. The POFs had to explain this to them and this caused considerable resentment. This resentment deepened when the community realised that the POFs were working closely with the Manzini City Council’s Planning and Community Department on tasks such as issuing complaints forms and educating the residents , and were receiving a monthly honorarium of one hundred Emalangeni (£10-00) from the MHUD (key informants 2010). Residents labeled the POFs as sellouts, meaning they were promoting the principles of the City Council which – as far as the residents were concerned – intended to usurp them of their land rights and greatly disadvantage them.

The interaction between the traditional and urban authorities also impeded community participation in an affordability study. At a meeting held in December 2009, the leadership of Moneni instructed residents not to participate in an affordability study to be conducted by the Manzini City Council (key informants 2010). The leaders believed that the affordability study aimed at ascertaining residents’ economic position in order to evict the poor who could not afford the project costs. Prior to this and in a similar vein, in the year 2000, residents of Msunduza had refused to participate in an affordability study conducted by Swaziland National Housing Board (minutes 2000). Consequently, this deprived the project planners of information to use in determining costs that could be borne by the community.⁵⁸

⁵⁷ Moneni Development Initiative and Swaziland Youth Congress, a youth wing of the banned political party.

⁵⁸ There was very poor response rate of 6 per cent, out of 1350 plot owners only 81 agreed to participate.

The empirical findings demonstrate that the intent by both urban and traditional authorities to shore up their jurisdictional powers over the Moneni area hindered active citizen engagement. Where partial involvement was made possible, it was mainly executed through traditional leaders and urban authorities' whilst contact with the residents at community level was minimal. The formation of the POFS discussed in this paragraph was one of the strategies intended to enhance residents' participation, though it was ineffective. Ironically however, as discussed in the next section, the influence that the traditional leaders had on the design of infrastructure demonstrates that the SUDP should not be seen as one that absolutely did not allow residents' participation.

5.8 The assumption that infrastructure in Moneni would improve residents' living conditions

The impact of traditional and urban authorities' interaction that takes place within a community development project is rarely analysed or related to the levels of infrastructural standards adopted in Projects. Yet, these interactions greatly shaped the infrastructure designs and meant that the project planners' assumption became rhetoric. Following the dissatisfaction expressed by residents of Msunduzi about the minimum design standards and noting the repercussions on maintenance, the Manzini City Council's Engineering Department adamantly refused to implement the minimal standards in Moneni (Progress Report). Contrary to the minimum standards of infrastructure detailed in the project plan (and provided in Msunduzi), the informal settlements of Moneni received high infrastructure standards (see Appendix 3 for a comparison of the standards of infrastructure implemented in the two informal settlements). Data collected reveal that some traditional leaders and residents of Moneni did not want the minimum infrastructural design standards provided in Msunduzi. For instance, they insisted they needed a sewer system as opposed to the pit latrines. Such a radical decision followed a field visit to Msunduzi by the Project Steering Committee, which involved Manzini City Council officials, and traditional leaders accompanied by select Moneni residents. The decision to invest in higher infrastructural standards was radical in the sense that traditional leaders and select community members adamantly said that they did not want to see 'improper' development in Moneni as they had seen during the site visit to Msunduzi. They dismissed all the reasons put forward by the Ministry of Housing and Urban Development for preparing minimal design standards, which revolved primarily around affordability (key informants 2009; minutes 2004). At the time of the deliberations about the design standards, the Swaziland National Housing Board was the implementing agency and not the Manzini City Council. The Manzini City Council, destined to take over long-term responsibility for Moneni after upgrading, engaged in deliberations with the Ministry over the design standards and also pushed for high infrastructure designs. Manzini City Council's Engineering Department also adamantly refused the minimal standards. This was

because, as argued by the Mbabane City Council in meetings between the implementing agencies and by the Ministry of Housing and Urban Development, low infrastructural standards also meant high maintenance costs. Due to the pressure from both the Moneni community and the City Council, the Ministry of Housing and Urban Development instructed the Bicon Engineering Consultant to review the engineering design standards to address the concerns of the parties.

However, not all residents dismissed the minimum standards, and a few select residents supported this decision (Focus group 2009; key informants 2009). In the forefront of those campaigning for high infrastructural standards were those wealthier residents and leaders of Moneni who occupy plots on Kingfisher Road, a well-built strip of Moneni close to other planned settlements. These people had undue influence on urban authorities. In community meetings with the Ministry of Housing and Urban Development, they categorically told the ministry's officials that if the project insisted on keeping to the minimum standards, for instance not providing a sewer line, there was no way the SUDP would be permitted to be implemented in the area. In this way the Manzini City Council also benefited in that it did not want to keep to the minimum standards but, without the adamant position taken by these few individuals of Moneni, Manzini City Council's argument would have been easily overlooked by the overseeing Ministry as had happened in many similar cases previously. For example, Manzini City Council's decision to construct a trade fair facility in a residential area was overlooked by the Ministry which, together with the other concerned ministries, overrode the City Council's view since the Planning Development Code (zoning) did not permit this.

The assumption that infrastructure in Moneni would benefit residents did not materialise, instead it benefited certain categories of residents and traditional leaders. The beneficiaries included individuals of royal lineage such as princes and princesses, whose homesteads are located along Kingfisher road; they enjoyed exclusive infrastructure benefits. For instance, to date the project is struggling to subdivide plots on Kingfisher Road as the concerned residents are totally against it (Plot Allocation meeting minutes 2010, personal information). All other plots in Moneni were easily subdivided, and the residents' outcry easily neglected but it is a mammoth task for the project officials to spearhead a subdivision on this strip of land. The issue has been a subject of negotiation with the representatives of Moneni in the Plot Allocations Committee some of whom are affected and have concluded that subdivision in this part is not necessary. They even lodged a formal request in writing to the Ministry to this effect. The project officials have treated this issue with caution, they are not prepared to upset the traditional leaders again who demonstrated the control they have on the development of the area by stalling the SUDP for a decade (key informants 2009; personal information). By May 2010 the issue had still not been resolved, the new Chairman of the Allocations Committee (MHUD Official) tried to assert the position of the Ministry with

regard to subdivision but he met the same resistance encountered by his predecessor. It remains to be seen if these large plots will ever be subdivided but clearly the other residents of Moneni are not taking kindly to the preferential treatment given to this class.

This improved infrastructure greatly increased project costs (which were calculated as the total costs of the project divided by a number of serviceable plots) and therefore residents had to pay a higher plot price estimated not less than £2000 per average sized plot. This greatly enhanced residents' negative perceptions of SUDP, with 76 per cent of the interviewees observing that it had not improved their living standards.

5.9 Conclusion

This chapter explored the impact of the SUDP on residents, challenging the assumptions that were made in project planning and the significance of overlooking interactions that take place between the traditional and urban authorities. These interactions, in conjunction with attempts to upgrade the areas, meant that residents were confronted with a lack of tenure security (Durand Lasserre and Royston 2000; Huckzermeyer and Karam 2006; UN-HABITAT 2004). The main unresolved controversy – which prompted a lot of tension between the traditional leaders and the urban authorities and shaped much of the SUDP's implementation – was the question of who held supreme authority over the land. Ultimately, none of the authorities was prepared to cede their authority. The situation thus invoked a lot of compromises on the part of project officials simply to get the project implemented; demonstrating that legislation does not guarantee authority (Jenkins 2001; Peters 2004; Lund 2008; Peluso and Lund 2011). In the process of the contestation, each authority strove to maintain its authority and used the residents' needs, desires and priorities to justify their respective positions. This, in turn, leaves the residents in limbo regarding who to deal with in relation to particular issues raised by the SUDP. Yet, residents were themselves opportunistic and disaggregated their issues and concerns: on any given issue, they consulted with the authority that was most likely to provide a favorable decision. Despite the possibilities of negotiating separately with different authorities, residents ultimately became more insecure as a result of the plot price and rates to be charged by the City Council which marginalised the urban poor, contrary to the assumption by scholars such as Desoto, Payne and Veenhuizen that title gives security (Desoto 1989; Payne 2002; Veenhuizen 2006). In fact, the challenge that residents had with plot affordability, discussed in this chapter, is evidence of the fact that developing countries need to adopt development and service delivery standards appropriate to the needs of the people (Hardoy and Satterthwaite 1989; Platteau 1996; Scott 1998; Rakodi 2001; Williams et al 2009).

The SUDP project is nonetheless generally viewed as a success story by the project officials and the World Bank. The World Bank's basis for success seems to be the progress and evaluation reports prepared by consultants, which do not pay attention to residents' economic development. Instead, these reports focus on assessing technical, institutional and organisational progress. With regard to the project officials' perceptions of the SUDP, the City Council representatives and members of the MHUD see the SUDP as a great opportunity allowing them to respond to pressure from politicians to improve and beautify the informal settlements. In this sense too, the SUDP might be judged as a success. These priorities were, however, contrary to residents' perceptions and experiences of the SUDP as they insisted that the project has not benefited them. The fact that the SUDP upgrading component, designed as a pilot project, was intended to be replicated in other informal areas in Swaziland if successful, may be one reason why the officials focused on what they saw as the project's positive impact on the living standards of the people. On the contrary, this chapter makes it clear that replication will not be possible if the project cannot recover the costs of infrastructure and cannot offer informal settlement residents secure tenure.

The project officials did not reflect on the adverse effects which, according to Ferguson (1994), often stem from development projects. These unintended effects resulted from the fact that many of the initial assumptions held by the development planners were inappropriate. These assumptions are a reflection of how modern states in developing countries still value high modernist architecture and plans concerned with beauty and aesthetics, yet which are irrelevant to the conditions of their people (Cheema and Rondinelli 1988, Hardoy and Satterthwaite 1989; Scott 1998; Williams et al 2009). The development planners' assumptions were based, in particular, on beliefs about the unnecessary role of traditional leaders and their authority, coupled with the requirements of participation and the need to involve residents. Contrary to the development planners' assumptions, the study also confirms that the introduction of titling did not automatically yield economic benefits. The findings indicate that infrastructural development is necessary (Cheema and Rondinelli 1989; Narayan 2000; Choguill 1996; Ogun 2010) but that it needs to be adjusted to suit the needs of the people. This leads me to argue that upgrading projects are required in Swaziland, just like in most countries in sub-Saharan Africa, but need to be appropriate to local communities, to be affordable and to be implemented in less complex ways which take local politics into consideration. Rejecting the residents' past and fostering immodest architecture will always attract vituperative criticism from residents of informal settlements – such as that made by Moneni and Msunduza residents who insisted there was 'no development' in their areas in spite of the expensive infrastructure provided.

Chapter Six: Swaziland Urban Development Project: Gendered policies and land ownership by women

'Legislative intervention alone cannot provide women with independent and effective land rights if they are not accepted and enforced culturally and socially' (Daly 2001: 128)

6.1 Introduction

This chapter examines another area where the SUDP hoped to make a fundamental impact and improve the lives of residents. The recognition of gender-based poverty and the subordination of women were identified, right from the very beginning of the World Bank and Swazi Government negotiations around the SUDP, as areas where the project would have a tangible and long-lasting effect. Implementation of the 99-year lease and gender neutral policies on plot allocation under the Swaziland Urban Development Project presented some complexities in patriarchal Swazi society. Underlying these complexities, were patriarchal cultural practices and other land-related legislative frameworks that encouraged discriminatory perceptions of women and their portrayal as minors at both family and societal levels.

In Swaziland, just as in most developing countries, the deprivation of women in land ownership is exacerbated by the fact that women's low status is reinforced by both customary law and statutory or common law (Toulmin and Quan 2000; Draft National Gender Policy 2006). Although many developing countries make an effort to incorporate gender neutral laws in their Constitution, especially in response to international organisation's conventions, laws are often not speedily updated to match the Constitutions. A vast gap remains between stated principles and state practice, despite the introduction of constitutions promising equality as a fundamental right (Agarwal 1994); the SUDP examined in this chapter will also demonstrate the same. Many countries in Southern Africa have gender sensitive clauses in their constitutions and these include Uganda, South Africa, Mali, Mozambique and Tanzania. However, the process of reforming statutory marriage and changing inheritance laws has been slow. In Botswana, despite gender neutral policies and laws stressing that access to land and housing should be on a first-come first-serve basis, Land Boards and town Councils are reluctant to give married women land because they equate such practices with breaking up families (Kalabamu 2004). More generally, scholarship on land and gender has emphasised that improving gender equality requires that a gender sensitive

constitution be followed by revision of laws such as those relating to marriage and inheritance (Deere and Leon 1997; Toulmin and Quan 2000; Daly 2001). Yet, implementation of statutory laws that protect women against anti-female bias is difficult and there is recognition that reformation of the constitution and laws will not automatically change women's position in society (Mackenzie 1990; Lastarria-Cornhiel 1997; Tsikata and Golah 2010). Thus, Toulmin and Quan (2000: 195) assert that 'law merely provides a platform within which rights and relationships are to be negotiated'. The central focus of this chapter therefore is to examine the gender neutral policies formulated under the SUDP and their implementation in Moneni. Before doing so, an analysis of the general position of women in Swaziland is necessary to appreciate and understand the changes made by the MHUD under the SUDP in an effort to improve women's chances to own a plot in the SUDP project areas.

In Swaziland, land user rights, and other property-related rights are predominantly exclusive resources enjoyed by men (Stewart and Armstrong 1990; Rose 1992; WLSA 1998; Thwala 2010). Within this patriarchal system, women occupy a minority status, according them a subservient position especially in relation to issues of power and authority in society. An issue of concern from a development perspective is that 39.7 per cent of all households in the country are female-headed households and 63 per cent of these are poor and lack productive assets (Poverty Reduction Strategy 2006). It could be argued therefore that women face poverty-related challenges in society because of their minority status, which in turn makes them more vulnerable. The large percentage of female headed households reinforces the need to investigate further women's inability to access land; productive assets; and land ownership. Research shows that rights invested in land could reduce women's vulnerability to poverty and destitution, mainly because they could enhance their opportunities to access economic resources independently of men (Agarwal 1994; Moyo 1995; Whitehead and Tsikata 2003).

On the subject of informal settlements in Swaziland, Hoek-Smit's (1988) research found that 60 per cent of land acquisition was carried out through the traditional khonta system or customary tenure. As suggested in Chapter Two, only men can approach the chief and khonta for land; women, who are not married or have no son, need to find a man who will do this for them. This restriction of women's access to land ownership is enshrined in both the statutory land tenure systems and customary tenure systems (Rose 1992; Forster and Nsibandé 2000; Thwala 2010). This gender inequality in property ownership is exacerbated, not only by the legal constraints, but also by structural, cultural, and sometimes financial constraints, as is the case in many African countries (Hall 1998; Mapetla et al 1998; Parnell et al 2002). These inequalities exist in both the rural and the urban areas. This chapter demonstrates that despite the formulation of gender-neutral policies under the SUDP, their implementation was challenged. Women continued to be vulnerable to patriarchal tendencies such that even the process of plot allocation and

compensation for their affected properties was riddled with patriarchal bias. The effective implementation of statutory law that protects women against patriarchal practices is thus hard to enforce and that the amendment of constitutions and laws alone will not radically alter women's position in society (Mackenzie 1990; Lastarria-Cornhiel 1997; Cousins 2007; Tsikata and Golah 2010).

In a bid to promote gender-neutral development, the World Bank had made it a condition for the Swaziland Government to include gender sensitive policies in the SUDP. For instance, the Operational Directive 4-30 stipulates that:

vulnerable groups at particular risk are indigenous people, the landless and semi landless and households headed by females who, though displaced, may not be protected through national land legislation. The resettlement plan must include land allocation or culturally –income earning strategies to protect the livelihood of these people' (Operational Directive 1990: 5).

To effectively carry this out, some World Bank Advisors were attached to the Ministry of Housing and Urban Development to assist in the drafting of specific policies, such as the peri-urban growth policy and resettlement and compensation policy. In addition, and as a way of bringing the discriminatory or gender blind policies out of obscurity, the Ministry of Housing and Urban Development carried out a series of studies through consultants. These studies made it possible to develop a much more thorough understanding of the disadvantages of women as prescribed in the current legislation (see for example, Thwala and Dlamini 2003). Yielding to this pressure to conform to the World Bank conditions and to follow up on the consultants' recommendations, the Ministry of Housing and Urban Development initially formed subcommittees to review issues of gender in plot allocation and pertinent land related legislation in the urban areas. The subcommittees were comprised of representatives from the different government ministries, city councils and consultants. In addition, the gender sub-committee identified potential constraints to land ownership by women. Consequently, in the early 1990s, the project officials realised the need to review legislation such as the Deeds Registry Act, the Marriage Act, and to formulate a Land Policy and Constitution⁵⁹ in order to take gender aspects into consideration (Ministry of Housing and Urban Development 2008). However, carrying out this task was beyond the scope of the Ministry and in an effort to address this limitation the MHUD formulated policies and guidelines that were gender

⁵⁹ When the SUDP began in the 1990s the country had no effective constitution since the 1973 constitution had been suspended. However the Swaziland Constitution of 2005 has already incorporated gender equality clauses on land ownership.

neutral, such as those of, plot allocation and resettlement and compensation policies. Stressing the small positive change in terms of access to land by women, Lowsby and De Groot (2007: 23) write ‘for the first time in Swaziland, eligibility to benefit from the project was not dependent on an individual’s sex or marital status’. Nonetheless, despite these advances, an effective review of most of the crucial legislation that negatively affects women is still pending in Swaziland, as is the case in many African countries (Deere and Leon 1997; Toulman and Quan 2000; Daly 2001). For instance, in Tanzania, women’s right to land are recognised by the National Land Policy, but reform on marriage and inheritance laws has been slow. In Swaziland, the slow review of the legislation had significant impact on women. Women experience the SUDP which aimed to improve their status in relation to land acquisition while simultaneously, as the discussion below will show, being disadvantaged in their legal position as women, under both the customary and statutory laws of Swaziland.

6.2 Women’s legal position prior to the SUDP

Customary law

As shown in previous chapters, the informal settlements involved in the Swaziland Urban Development Project such as Moneni and Msunduzi had been administered as Swazi Nation Land, even though they were legally declared urban areas (MHUD 1992; Muzvidziwa and Zamberia 2006; Lowsby and De Groot 2007). Scholarship on Swaziland’s land tenure either implicitly or explicitly points to the fact that a right of occupation under customary law would only be protected if noted on the register compiled by the Chief’s Inner Council (Hughes 1964; Crush 1980; Levin 1997; Rose 2002). As discussed in Chapter Four, these scholars also mention that under this type of tenure a woman can only access land through a male patrilineal relative⁶⁰ such as a husband, son, or other male patriarchs. Such customary practice is common not only in Swaziland but also in most parts of Africa, where, a woman can only access land through a male relative such as a husband, son, or other male patriarchs (Mabogunje 1992; Bassett and Crummey 1993; Moyo 1995; Goheen 1996; Tsikata 2010). Unmarried women are considered to be ‘in transit’ and when they do get married they forfeit their rights in their natal families (Agarwal 1988; WLSA 1990; Schlyter 1996; Thwala 2010). This perception of a woman as an eternal minor

⁶⁰ Single men and women are not entitled to any plot allocation under Swazi Nation Land (Nkambule 1983; WLSA 1998).

deprives her of the right to control land which is the focus of this chapter, thus, minimising her chances for improving her financial status and being assertive in decision-making that pertains to her life (Meinzen-Dick et al 1997; WLSA 1998; White and Tsikata 2003; Moyo 2008). Illustrative of this lack of control is the fact that the discrimination against women in land ownership also leads to an absence of women in housing delivery systems (Muzvidziwa and Zamberia 2006).

On the contrary, men are privileged in several ways and able to acquire rights to land through inheritance, a land grant, a loan or through chiefly allocations. Most men do not question this status quo and thus fail to recognise the ways in which women's lack of control impacts on their gendered roles, or what Caroline Moser terms the triple role of women, meaning, they are involved in reproductive work (child bearing, reproduction of the labour force) and, productive work (income earners) (Moser 1989). Swazi men in general believe that women's access to land should be controlled by men and that this should be perpetuated under the SUDP (WLSA 1998; Rose 2002). This patriarchal dominance was frequently confirmed during my research and, in a focus group discussion held in Moneni, the men argued that:

...women in Swaziland have more rights because even though the land is in the name of their husbands, according to Swazi custom the identity of the homesteads is the wife's surname. For instance if the wife's maiden name is Simelane, community members refer to the homestead as KalaSimelane even if the man's surname is a Dlamini (focus group discussion 2009).

The focus group's observation is a glimpse into the manner in which men's interests are protected within the current legislation. The patrilineal system means that many men within an area would have the same surname, and surname would not serve as a usual way of identifying homesteads. This neglects that the use of women's maiden surnames does not automatically grant women the right to own and control the means of production, such as land. Instead, women continue to have insecure land rights despite this recognition of their maiden surnames. The group also said that an unmarried woman can *khonta* (settle) in the name of her son, which it viewed as evidence of women enjoying some privileges in land ownership. In keeping with other research findings in Swaziland about male attitudes towards women's access to land (WLSA's 1998: 102), these men argued that women were adequately protected within the patriarchal system:

...there is absolutely no need for a woman to access land in her own right because our culture provides access for a woman through a male relative. As men we are content with the way that the land is accessed by women.

The assertions made by both male focus groups overlook the disadvantages that women sometimes face as a result of using their sons or any other patrilineal relative for *Khonta*. There are cases of sons who played a proxy role in settling (*khonta*) and then subsequently expelled their mothers from the homes when they were grown up (WLSA 1998; Rose 2002). Similar, the marginalisation⁶¹ of women is demonstrated through situations where in-laws take advantage of widowed women after the death of their husbands. Ordinarily, under Swazi Customary law, a woman has to stay with her in-laws after the death of her husband if she wears a mourning gown and or consents to a levirate marriage with one of her husband's brothers. Since the law makes a married woman a minor (Armstrong and Nhlapho 1985), close relatives of the husband assume the status of guardianship which previously was a responsibility of her husband. As a result of the law giving the minority status to women, cases of 'property grabbing', where widows are chased off the land they lived on with their husbands, are common especially where relations between the in-laws and the widow are poor. Such predicaments worsen the economic status of women who are made landless (WLSA 1998; Rose 2002). This may occur when the wife is not living with her in-laws; for example, a couple might stay in one area while having access to land elsewhere through the *khonta* system, but after the husband's death, his relatives might claim to be the rightful people to inherit the property. This clearly demonstrates how land tenure is gendered and relations are based on cultural and social processes (Goheen 1996; Lund 2008; Moyo 2008). As discussed in the following section, women's access to land and security of tenure is not necessarily improved in urban areas where they are governed by statutory laws.

6.3 Statutory laws

The deprivation of women in land ownership is exacerbated by the fact that women's low status is reinforced by both customary law and statutory or common law (Toulmin and Quan 2000; Rose 2002; MHUD 2003). Married women's access to land under statutory tenure is determined by the type of marriage they contracted, a trend, which is also prevalent in other sub-Saharan countries (Agarwal 1994; Hall 1998; Whitehead and Tsikata 2003). Research shows that very few Swazi women own land, and this may very well be attributable to the 'traditional' role of a woman in Swaziland as 'wife, mother, child

⁶¹ The marginalisation of women in property ownership has been observed in other cultures such as India where it has been observed that daughters only inherit property of their fathers where there are no sons, and that even in cases of women who inherited land, their brothers and other relatives threatened to dispossess them (Mies 1979; Agarwal 1994).

bearer, food producer and household-manageress' (WLSA 1990: 99). In Swaziland, as in many developing countries, there has been an effort to incorporate gender neutral laws in their Constitution, especially in response to pressure from international organisations. Yet, other statutory laws have not been speedily updated to match the country's Constitutions (MHUD 2003; World Bank 2005). In a similar manner, although the Swazi constitution incorporates clauses which acknowledge women's right to own land, most of the land-related legislation in Swaziland constrains women's access to land and this includes the Marriage Act No. 47 (1964); the Deed Registry Act No. 37 (1968); and the Swazi Administration Act No. 28 (1920). These will be examined individually below.

The Deeds Registry Act 1968 subjects women to special requirements during the process of registration of property by virtue of firstly, their sex and secondly, their marital status. Single women can purchase property and receive freehold title in their own names. However, even after registering a property under freehold title, single women are expected upon marriage to declare their change of marital status to the Registrar and to have the land title transferred to their husbands' names. This means that unmarried women are considered to be 'in transit' between their fathers' and future husbands' patrilineages and when they do get married they forfeit their rights to their natal families and to their land (see for example, Argawal 1988; WLSA 1990; Schylter 1996; Thwala 2010). Under the SUDP, this meant that even if unmarried women were allocated plots, they would lose these upon marriage. Such legislation does not improve the economic status of women, and it can be asserted that it maintains the status quo of male dominance in society. In a similar way, a divorced woman could have a property registered in her name under the SUDP, but if she decided to remarry then she falls into the trap of losing the title to the new husband. This therefore suggests that two options are available for a divorced or widowed woman. One is refraining from remarrying, which is an idea that may not appeal to many women. Alternatively, the widow can opt for marriage outside of community of property without acquiescing to her new husband's marital power.⁶² Although legally permitted by the Marriage Act 1964, this type of marriage is not acceptable to many Swazis and marriage in community of property is therefore common in Swaziland. However, if widows do remarry in community of property, then under the SUDP, children from their previous marriage could be negatively affected by the transfer of their father's property to the stepfather who possibly, might not have the interests of the children at heart.

⁶² Marital power is the power or right that a husband has to control his wife's person and property. Under statutory law the wife loses majority status and becomes a minor before the law, thus incapacitated to enter into contracts or access credit on her own, and even has very limited control over the joint property of the marriage.

Marriage in community of property exemplifies that the registration of land may also maintain and reinforce the traditional male dominated control over access to land, thus creating new uncertainties especially for women (Toulmin and Quan 2000). The tendency for laws to perpetuate women's marginalisation in registration of property is not only common in Africa, but also in South Asia and to some extent in Latin America, despite the progress made in promoting gender equity. In Latin America, most countries' land reform required that beneficiaries had to be heads of households; thus, disadvantaging women who had already been marginalised by previous land reforms. Only three countries prioritised female heads of household in recent land distribution efforts, namely El Salvador, Nicaragua and Colombia (Deere and Leon 2001).

Another piece of Swazi legislation depriving women of the right to plot ownership is the Marriage Act No. 47 of 1964. As indicated above, the marital status of women is very significant when it comes to land issues. Within Swaziland, two different forms of marriage are legally possible, namely marriage contracted by civil rites and marriage contracted under Swazi law and custom (Armstrong and Nhlapho 1985). Marriage under civil rights comes in three forms, namely: marriage in community of property; marriage out of community of property; and, marriage out of community of property without or with marital power (Marriage Act 1964). Marriage in community of property suggests that assets and liabilities are pooled together, where the husband has marital power over his wife's person and property and (the husband) is the sole administrator of the joint estate. Describing this type of marriage, Armstrong and Nhlapho (1985: 29) argue that two centuries ago the husband was a master and guardian administering her properly representing her in court and acting for her in commercial matters. This is still the case today for Swazi women married in community of property.

Marriage out of community of property with marital power still gives the husband some partial powers over controlling his wife's assets, as he becomes an administrator and controller of her assets (Ministry of Housing and Urban Development 2003). A woman married out of community of property with the exclusion of marital power enjoys total freedom from her husband's control over her assets. Although this type of marriage gives powers to women, and allows them to control their assets, few women in Swaziland either know about or embrace it. Marriage, for most women, involves a transfer of authority from their fathers to their husbands. The minority status bestowed on women even in statutory law could be attributed to societal perceptions and expectations; hence the argument made in this thesis that changing constitution or development of policies without an accompanying review of legislation and changes in the perceptions and practices of people will not improve women's social and economic status in society. Reaffirming the need for wider change, the Gender Unit Project Coordinator based in the Deputy Prime Minister's office asserted that 'a lot of women contract marriage in community of property

because of societal perceptions and expectations. If a woman decides not to engage in community of property marriage, she is viewed with suspicion not only by her in-laws but sometimes also by her own family' (interview 2010). This type of marriage is viewed with suspicion as it appears as though the couple intends to live separate lives (Armstrong and Nhlapho 1985; WLSA 1995). Other Swazis consider it as 'no marriage at all' as they believe it undermines the principle of sharing considered to be the chore characteristic of marriage. The Marriage Act 1964, thus 'collaborates with' the Deeds Registry Act, 1968 in reinforcing the exclusion of women in the execution of property rights. Section 16(3) of the Deeds Registry Act 1968 prevents women married in community of property from registering immovable property in their names and also permits sole administration of property by husbands married in community of property. Such a law was bound to adversely impact on women's ability to access the leasehold under the SUDP project.

Another challenge that women face with regard to their minority status afforded by the Marriage Act pertains to seeking loans from financial institutions. Married women are required to obtain the consent of their husbands before financial institutions consider granting them loans. Consequently, given the present statutory regime, women cannot take out a loan independently of their husbands while husbands take out loans without their wives even knowing about it. Condemning the above pieces of legislation and resultant marginalisation of women even by financial institutions, the Swaziland Gender Unit Project Coordinator, Ms. Madonsela asserted:

...the law assumes that the relationship will always be smooth; the problem is that some men go to the banks and sign a loan agreement and then take all the money and spend it on their selfish desires without taking cognizance of the needs of the family or wife (interview 2010).

In her role as the Gender Unit Project Coordinator, Ms Madonsela, encountered situations where this law, and the manner in which men abuse their right to borrow money against women's property, worsens poverty: when the debts cannot be repaid, women's small businesses are forced to close and children drop out of school due to the lack of school fees. Ms Madonsela continued to express her frustration with the legislation and reflected:

Why should a professional female employee like me, working under the Deputy Minister's Ministry for instance need a man to get a loan when I have a regular monthly salary and can afford to service the loan independently? (interview 2010).

The Marriage Act, 1964 thus undermines women's autonomy and access to land, regardless of women's economic or educational status. Around the world, women have challenged these marriage constrictions, mobilising and engaging in particular strategies to be considered for plot allocation. For example, in the Nicaraguan Agrarian Reform, female household heads received priority and joint titling was introduced for married couples due to the demands of the Women's Commission of the Sandinista-affiliated national peasant organisation, which lobbied for a more gender-equitable agrarian reform (Deere and Leon 1998). Yet, in Swaziland, no such collective mobilisation has been forthcoming. Instead, as described above, using marriage as the defining characteristic to determine women's access to land is replicated in other Swazi legislation. Issues such as this have frustrated gender activists such as Ms Doo-Aphane, former National Coordinator of the Women in Law in Southern Africa, and currently chairperson of the Swaziland Gender Consortium. In her efforts to fight for gender equality in 2008, Ms Doo Aphane took the government to court for prohibiting her from registering property jointly with her husband (The Times of Swaziland 2010). She argued that Swazi women married in community of property should be afforded equal rights to their husbands in the administration of property. This demand challenged the existing Section 16(3) and regulations 7 and 9 of the Deeds Registry Regulations, which have not been synchronised with the Swazi Constitution. The Deeds Registry Act, 1968 further prevents married women from registering properties without assuming their husbands' surnames or from having sole ownership of property. Aphane drew the attention of the court to the discrepancies between the different pieces of legislation and the Swaziland Constitution 2005, which recognises rights of women to independently acquire property. She won the case in the High Court but the government appealed to the Supreme Court of Appeal and this saw her lose the case on technical grounds. The Supreme Court concurred with her that legislations relating to land ownership needed to be harmonised with the Constitution. However, the Supreme Court of Appeal asserted that it was not the High Court Presiding Judge's responsibility to amend the law but only to make a recommendation. Instead, the legislature (through parliamentary sittings) needed to be given time to make the necessary changes to the law (Inter Press Services News Agency 2010; Times of Swaziland 2010). Currently, the land policy is still in its draft form and it has been in this form for a decade (Draft Land Policy 2009; key informant 2010). Key informants, who preferred to remain anonymous, pointed out that the procrastination in approving the draft land policy is due to the introduction of the clauses relating to gender equality in land ownership. The clauses are being contested by most of the traditional leaders, namely chiefs and some members of the country's most senior traditional structures.

6.4 Muddling through: Property rights deprivation

The case of Doo Aphane is evidence of the challenges that women go through when they want to register plots in their names and of the ways in which the contestation between urban and traditional authorities can hinder gender-related reforms. It also helps us to clearly understand that without the review of legislation(s) such as the Marriage Act, 1964, the Constitution will not improve the independent status of women. It further highlights that male control over land is not uncontested. Development projects thus become a 'space' in which, not only are different men competing for authority and power, but gendered struggles also come to the fore. Not only is male control threatened by male absenteeism and the economic independence of women, but also by select women who deliberately use the courts to assert their rights. Moyo (2008) explains that although women contest gender inequality by recourse to legal processes, only a few select women follow this route (also see Whitehead and Tsikata 2003). With regard to the informal settlements of Moneni and Msunduza, this study found the same trend, in that women found ways of manipulating the land tenure systems, but very few women openly challenged either the customary or the statutory legislation. Women do not act passively in response to the erosion of their rights to land, instead they fight for the rights by tapping into any political and social influence at their disposal (Lastarria-Cornhiel 1997; Amanor 2001). Women devised strategies 'to evade the control of males and increase their power within the patriarchal society' (Schylter 1996: 59). Mackenzie (1990) similarly explains that women in the Murang District of Kenya use different ways to retain claims to land, involving registered women's groups and collective organisations purchasing land collectively and, in so doing, bypassing men's control through statutory law. In Swaziland, and especially in Moneni, women respond to their exclusion in two main ways: by using male kin, particularly husbands and sons, to access resources and by using other routes of accessing land to evade male authority through manipulation of the customary system, such as unofficial purchasing, renting and approaching members of the Inner Council.

Unofficial Purchasing: Moneni women purchased pieces of land from other residents. For instance, Mrs Mtsetfwa, a *long-term elderly* resident of Moneni who owns a large piece of land apportioned her land to five different individuals four of whom are women, and allowed each to construct a small structure. These women were from the rural areas and had come to look for job opportunities. In an interview with Mrs Maseko who now serves as an overseer of the homestead, following the relocation of the Mrs Mtsetfwa to her second home in Elwandle, she mentioned that some of these women were then introduced to the Chief's Inner Council. They were introduced as relatives who stayed in the homestead when in fact they had paid for access to land. The 'purchase' involved payment of an agreed-upon price, which the traditional leaders were not be told about as the transaction was in violation of the custom that only Chiefs in Swaziland have a right to allocate land (focus group 2009; Maseko 2009).

A majority of the women who obtained land through this mode approached their own natal relatives and did not involve their husbands in the search for land, but did so in their own name. Often they said it was because they wanted to be in close proximity to their work places. Mrs Mdlovu and Mrs Masuku interviewed for this study stated that they explained their desperation for land to their natal families and received their cooperation by being ‘given’ a piece of land (household survey 2009). Although these women paid a certain fee to the people who allocated them land, they did not consider this transaction as purchasing but as *sibongo* (a SiSwati word used to refer to a token of appreciation).

Renting: Other women, instead of paying a lump sum in lieu of the land ‘sold’ to them by other residents to build a house, paid a monthly rental fee to the land owner. This is a different form of renting in that they built their own houses and then continually paid rent for the permission to build on the land. These women were generally not introduced to the traditional leaders and their residence was not formalised. A few of the women rented from other women who had enough land. As discussed in earlier chapters, some of the women who used this strategy are those who, during implementation of the SUDP, were instructed by the Moneni traditional leaders to pay the *khonta* fee in order to be eligible for plot allocation. The leadership argued that these individuals were not known in the area since they had never been through the *khonta* system. For example, Mrs Gama stayed at a homestead known as *Marabini* because there is home brewed liquor sold at this homestead. She obtained permission to build a room from the owner of the home and had lived for many years before, in 2008, the Inner Council instructed her to pay the *khonta* fee in order to be considered *as* a resident of Moneni and be eligible for plot allocation (focus group 2009 and Mrs Gama 2009)

Approaching Members of the Inner Council: In some instances women directly approached any of the traditional leaders who, in turn, would act as emissaries for the women and approach the Inner Council. According to Swazi custom, a woman is always expected to have a male relative when seeking access to land and not to directly approach the traditional leaders. Yet, in Moneni, some women did seek permission to settle without being assisted by a male relative. Interviewees explained that it is common for women who take such a route to provide monetary incentives to gain favour and facilitate quick processing of the request. The emissary would accompany the woman to the Senior Prince and his *libandla* (or Council) to make the request. The emissary is expected to provide more information about the woman – especially with regard to her social behaviour and the reasons why she left her initial area – and then a decision is made on whether to allocate land to her or not. In certain cases, such as Mrs Nhlabatsi, women requested help from their lovers, which is anti-Swazi in that a boyfriend is not expected to act as a proxy for a woman in the land acquisition process because the relationship is not legal and formalised. The above strategies pursued by Moneni women residents confirm Rose’s observation

that women use different strategies which include assertion, avoidance and deception (Rose 1992) to defend their access to land. This manipulation of male control occurs not only in Swaziland, but in many patrilineal societies in sub-Saharan Africa as women devised strategies ‘to evade the control of males and increase their power within the patrilineal society’ (Schlyter 1996: 59; Mabogunje 1992; Toulmin and Quan 2000).

These strategies do enhance women’s control over the piece of land they call their own, even though their access is unofficial, and this can make these women economically independent as they decide how to use the land. Closely linked to this, is the freedom obtained from the control of male relatives because, in these irregular and unconventional processes of settling, male relatives were not involved; and hence, have no basis for making any claim to the management of the land. Even during formalisation of the informal settlements through the SUDP-aligned processes, these women stood a better chance of being allocated plots as they were already settled there, even though for some this came with conditions as illustrated by the case of women instructed to pay the khonta fee.

This study found that some of the informal strategies that women used to acquire land sometimes caught up with them at a later stage. Thus, informal strategies also reflect two things. On the one hand, these strategies reveal the nature of the impediments women encounter as a result of the patriarchal local and state institutions put in place to adjudicate their cases. On the other hand, the strategies also show what happens when these institutions decide to engage in progressive practises to defend women’s rights against patriarchally-inclined relatives or husbands, as shown by the case of Ms Colekile Matsebula. The following account of Colekile (not her real name) also demonstrates how some women suffer as a result of the strategies used by other women to acquire land in the informal settlements and how – despite the good intentions of the SUDP – some women still face marginalisation in the plot allocation process:

Colekile successfully sought the assistance of man she considered as her relative (but considered by some to be her lover) to get a piece of land in Moneni, in an area that Colekile chose and not in her relative’s place. However, a legal wrangle ensued between her and the wife of her relative/lover during the SUDP implementation. The wife claimed her husband had invested money into the home Colekile stayed in, thus by mere virtue of being the lawful wife of the deceased husband, she was the rightful owner of Colekile’s home. This issue was further complicated by the fact that the project had to pay compensation in respect of one of the buildings demolished to make way for road construction. The wife believed that her husband was the one who built the house for Colekile. Colekile she explained that this man, whom she referred to as her ‘uncle’

(thereby dismissing the claim that she had an affair with him) only helped her with the logistics of seeking permission to settle, and that she had purchased all the building materials using her personal income. This information was clarified, in the High Court where Colekile was able to produce all the receipts and she was also supported by her builder who acted as her witness in court. These factors greatly enhanced her defence. The court judgement was in favour of Colekile and instructed the Ministry Housing and Urban Development to pay the compensation of approximately fourteen thousand pounds to her.

In this case, Colekile was able to successfully defend her property rights. During this dispute, the traditional leadership of Moneni wrote a letter to the court, supporting Colekile and stating that she was considered by the Umphakatsi (Royal Kraal) to be the rightful owner of the property. This support cannot be explained simply in terms of Colekile having built the house. There are several factors that might have affected the decision of the traditional leaders. First, the project's condition was that only residents of Moneni were eligible for compensation and, since the wife contesting Colekile's claim was not resident in Moneni, but in EZulwini (to confirm), she could not be given preference over a local resident. Secondly, it could be that the traditional leaders felt intimidated by the fact that Colekile, although single, was powerfully connected. One of her children was of high social status, being a prominent lawyer in the country. Lastly, since Colekile was an asset in the community and involved in a number of community projects, the leaders possibly felt obliged to grant her justice.

The above case also illustrates the role sometimes played by women in reinforcing gender discriminatory practices. The rumours of a relationship and the wife's conclusion about her husband investing money into the home gives the impression that she was not convinced that Colekile had built the home independently. The above analysis reveals the discrimination against women in terms of property ownership; but also the contradictions between diverse legislation and how women manoeuvre in an effort to avoid the restrictions. These examples are, however, exceptions and are borne out of the limitations that women experience in relation to both the urban and customary systems. As recognised by the World Bank and the MHUD through Project preparation reports, the widespread patriarchal culture coupled with the restrictions women encounter in accessing land, necessitated the gendered approach under the SUDP. This SUDP specific approach is explained further in the following section.

6.5 Creating a gender-sensitive legislative framework

Pressure from the World Bank's loan conditionality – which placed emphasis on treating the disaffected equally – combined with studies conducted under the SUDP, stating that women were discriminated against under current legislations, prompted the government to make a commitment to addressing gender issues under the project. In preparation for the SUDP, the Ministry of Housing and Urban Development approached the King for consent to release Swazi Nation land near the urban areas to the Government for planning purposes. Distribution and registration of the plots would be carried out according to the provisions of the Crown Land Disposal Act of 1911 and, as such, displacing the Deeds Registry Act 1968, which prohibits women from owning plots in their own right. This arrangement was for the SUDP areas only. Furthermore, the Ministry of Housing and Urban Development brought together pertinent stakeholders to a workshop to deliberate on how best to ensure that the project benefited both women and men equally. This was necessary as the guiding principle of the project was that residents should not be made worse off (hence the Resettlement and compensation policy, 1996). At this workshop it was resolved that a Gender Perspectives sub-committee be formed and that it should be comprised of, amongst others, representatives of the Ministry of Housing and Urban Development and Gender Unit in the Ministry of Home Affairs and other stakeholders and technical experts such as a gender specialist from the University of Swaziland. The sub-committee had to look into ways in which the project could meet the following gendered *short and long-term objectives* of the SUDP.

Short-term objectives:

- To ensure that all allottees within the project areas have equal access to property rights and all project benefits and that their successors in title are protected;
- To raise public awareness regarding issues that may arise relating to the policy initiative introduced under the project vis-à-vis existing legislation.

Long- term objectives:

- To ensure that potential allottees are not hindered by a law or practice to access or control property rights and other project benefits generated by the project;
- Ensuring that both women and men are given equal opportunities of accessing benefits under the SUDP as allottees;
- To raise public awareness and promote understanding of the link between existing legislation and new policies introduced under the project and of the impact on gender equality, access to property rights and improvement of quality of life.

What the Gender Perspectives sub-committee did was to analyse the implications of the current law if applied to the SUDP by using scenarios such as that of a woman married in community of property with an absentee husband. The possibility that such a husband, who had been absent for many years, could return and sell, mortgage or even donate the plot which the SUDP would have allocated to his wife was raised (MHUD 1998). This would leave her in a worse-off situation. The working group therefore recommended a reform of the Deed Registry Act, 1968 and Marriage Act, 1964. Legal reform was necessitated by the realisation that the interpretation of the current legislation concerning acquisition and registration of immovable property will vary greatly. The formation of the sub-committee and its recommendations, emanating from consultative meetings with several stakeholders, led to the introduction of gender-neutral plot allocation policies and guidelines under the SUDP that guided the plot allocation process (MHUD 1998). All the recommendations of the gender perspectives sub-committee were submitted to the Ministry of Housing and Urban Development which, in turn, lobbied the Ministry of Justice and Constitutional Affairs to review the pertinent legislation. However, to date the Deeds Registry Act, 1964 has not been reviewed and the Marriage Act 1964, remains in place.

6.6 The SUDP and its gendered approach

The SUDP sought to address the restrictions of women's access to land by introducing gender-neutral policies concerning the plot allocation and procedures, resettlement and policy guidelines, 99-year lease and plot pricing policy. These factors will be examined in the paragraphs below. The project could be described as a pioneer in this respect which explains World Bank technical advisers to the MHUD, observe '...the 99-year leasehold title provided equal access to plots that were generated from Crown Land' (Lowsby and De Groot 2007: 23).

The 99-year leasehold was a form of tenure introduced by the Ministry of Housing and Urban Development under the SUDP, to accelerate urban development by converting Swazi Nation Land in the project areas into Government land or Crown Land. It was designed as a way to make land accessible to all residents in the project area irrespective of their sex and this land could be mortgaged, thus increasing poor people's opportunities to access housing loans. According to the 99-year lease concept paper, the introduction of the lease emanated from the recognition of the restrictive nature of both customary and statutory laws with regard to land ownership as these privileged a few at the expense of the poor. The 99-year lease therefore was meant to address both the issue of affordability and the limitations of the Swazi Nation Land and freehold land with regard to access to land, which implied that women would also benefit. The allocation policy and related criteria set out in Chapter Three of this thesis were instruments

designed to enable this anticipated gender equity in land distribution in the project areas. However, implementation of these policies was met with resistance as patriarchal tendencies were consistently reinforced as a result of historically culturally accepted practices. The discussions in the next section, which examines resistance to a gendered approach, will show that adherence to this principle of gender equity was only partial. Similar resistance to land reform which is meant to also promote gender equity is experienced in many developing countries. For instance, in Masvingo Province in Zimbabwe, it was observed that ‘while formal legal systems have changed, the defacto situation is that ‘traditional’ or ‘customary’ systems of land allocations, universally overseen by men - favours the allocation of land to men’ (Scoones 2010).

The Resettlement and Compensation Policy and Guidelines provided guidance on issues of resettlement, with the intention of ensuring that the affected residents in the project areas would not be worse off as a result of the SUDP. The Ministry of Housing and Urban Development reviewed the resettlement policy and guidelines, which had been in existence before and had been implemented in other Swazi projects but which had previously paid no attention to women’s issues. The MHUD had to comply with the World Bank’s condition for the loan, dictating that a resettlement policy and resettlement needed to be prepared in accordance with Operational Directive 4.30 which, as discussed in the beginning of this chapter, emphasises the need to consider vulnerable women’s position. The gender sensitivity of the SUDP is also reflected in the Resettlement and Compensation Policy Guideline *section 6-D* which reads:

All women participating in Ministry of Housing and Urban Development Projects shall be given the opportunity to finance, own title to land and fully participate in any development project sponsored by the Ministry on an equal footing to their male counterparts, without signature or approval of a legal age male (Resettlement Policy Implementation Guidelines 1996: 6D).

This suggested that compensation for properties affected by the project would be paid to the owner, and no discrimination would be exercised against women of any status. This clause was included to address the limitations inherent in the existing legislation, which considers women as minors, hence depriving them of owning land and accessing finance from financial institutions.

Although the resettlement Policy and Guidelines paid some attention to the needs of the women, their implementation was not given the similar priority. For instance, the SUDP provided financial cash compensation and temporary shelter to four women who had to relocate in order to make way for road construction. The project did not provide any other support to these women, in spite of their repeated

requests to be provided with water and transport. Two of these women had not started building replacement structures at the time of fieldwork. Instead, they lived in portable structures provided by the project and intended to be used on a temporal basis. The women argued that the lack of support from the project had made it hard for them to build their new homes and that the compensation money had been spent on other basic needs (interviews 2009). This situation is evidence that the 'displacement process [can] lead to a decline in the standard of living of displaced people and also to heightened impoverishment' (Mehta 2009: 12). An additional policy and guidelines, which specifically addressed women's land access, was the Plot Allocation Policy and Guidelines. In view of the minority status accorded by legislation to women, these were necessary to promote access of women to plot allocation.

The Plot Allocation Policy and procedures

An irony in the endemic discrimination against women in respect of land ownership is that one-third of Swazi households are run by women who serve as either defacto or de jure heads of households (Forster and Nsibandwe 2000), by virtue of being widows or separated from their spouses when husbands migrate for work. They have to provide for the basic needs of their children and make decisions as the main person in charge of the household on a daily basis (Moser 1989). The plot allocation process under the SUDP was based on equity and fairness, with the emphasis being on deserving heads of households, who are residents in project areas, and who should be allocated land regardless of gender (Plot allocation policy, 1995). A survey conducted by the MHUD in preparation for the SUDP, revealed that 33 per cent of female headed households existed in the project areas. These female headed households were made up of women living with men, but without legal contractual relationship, and of women in contractual relationships with absentee men (Ministry of Housing and Urban Development, 1992). According to both customary and statutory Swazi laws, cohabitation without a legal contractual relationship is not recognised. Hall (1998) asserts that household access to land does not always benefit women therefore there is need to develop land-related policies meant to benefit women. Such policies should recognise informal relationships, because failure to do so disadvantage women. For instance, if a plot is allocated to a man in such a non contractual relationship, there are possibilities that he might decide to marry another woman, and deprive his initial partner of the land, which she probably worked hard to access. The SUDP therefore had to prevent such practices from happening. However, although the project had information on gender discriminatory practices, the lack of proper structures to monitor the distribution of land to women, became constraints in addressing the gender bias, especially as there were complexities that even the traditional leaders were oblivious to.

As discussed in the above paragraph, the land in the project areas would be distributed under the 99-year leasehold terms. This is a hybrid of customary and statutory tenure characteristics in that land could not be sold, but the cost of infrastructure would be charged and beneficiaries would be issued with leases. This new form of tenure was deliberately initiated by the Ministry of Housing and Urban Development in consultation with the Ministry of Justice and Constitutional Affairs to enhance affordability and accessibility of land to all residents in the project areas. The shortage of land in the urban areas for low income residents, and also the prevalence of Swazi Nation Land close to the urban boundaries put pressure on urban officials to embrace this new form of tenure. Under the SUDP, residents will not own the land, but they will have the right to use it. The difference is that they will be title holders, which is an opportunity granted under freehold title, and will be able to raise mortgages in relation to the land.

The allocation process was initiated by conducting a census of all households in the project area. The resulting lists provided information on the individuals who had obtained land, either through the traditional *khonta* system or by purchasing land through unofficial channels (key informants 2009). In Msunduzi there are, in addition, residents who obtained permission to settle from the District Commissioners (who administered government land in conjunction with the traditional structures before the City Council took over).

The Moneni allocation exercise, as discussed in Chapter Three was managed through the plot allocations committee - which comprised not only of the MHUD and City Council officials, but also appointees of the traditional Inner Council - and decided whether a person is to be allocated land or not. This involved assessing whether a person was to be considered a homestead head. The Regional Administration Office had to be represented in all meetings, yet this was something which did not happen supposedly due to the frequency of the meeting and the staff shortage.

With regard to land allocation, a survey was undertaken at the beginning of the project to identify the heads of households who, whether male or female, were in due course to be allocated plots. These decisions had to be confirmed by Moneni representatives on the Plot Allocations Committee. With regard to Moneni, the Ministry of Housing and Urban Development's official, who chaired the meeting, grew up in the area and therefore also helped in cross-examining the representatives, during the plot allocation process where he suspected anomaly. In the case of a household where the recognised head had died following completion of the survey, the family had to prepare an affidavit appointing a member who would act as head. In this scenario, the Plot Allocations Committee did not have any particular influence. The influence of the Plot Allocations Committee tended to be reduced further in the allocation of plots to

adult children. In this category, it is the decision of the household head that counts. However, the Plot Allocations Committee did provide intervention especially when there are intra-household disputes, or disputes between neighbours as has sometimes happened.

The work of the Allocations Committee was not straightforward and despite the production of the census data in the area, the plot allocation list was not universally accepted. A number of residents of Moneni lodged their objections to the City Council about plots they considered to be ‘wrongfully allocated’, and leaving the ‘entitled’ individuals out of the plot allocation list. Some of the resident argued that the persons who had been allocated land were not owners, but guardians. The underlying factor though was that the success of an individual’s claim to land depended on the approval of informal settlements’ traditional leaders. This can be said to be similar to the Mbari experience in Kenya (Mackenzie 1990), where elders’ authority is maintained in the allocation of property and elders ‘are valued as witnesses who sanction the individual sales of land’ (Mackenzie 1990: 613).

As indicated above, the gender neutrality of the urban development project is manifested in both the 'plot allocation policy' and in the 'plot allocation criteria'. This section explores the extent to which the neutral criteria were adhered to. The allocation criteria do not differentiate between male and female heads of households; instead, they focus on identifying different kinds of heads of households. For instance, Priority group No 1 is heads of households who have been granted a right to land either through *khonta* or occupancy permits, or who have the permission of the *libandla* (community council) and can afford the plot price. Despite using different avenues to acquire land, these heads are all granted recognition in the allocation criteria. Yet, in Swazi law and custom, the homestead head is usually considered to be a man who is referred to as ‘*Umnumzane*’, and this term is without feminine equivalent, making its use one which has a bias in terms of the traditional allocation of gender power and gender status (Kuper 1963). Its use then makes an unwritten assumption based on traditional cultural practices, reinforcing the idea that men are household heads and that, if married, their wives are not entitled to land through the plot allocation criteria. It is therefore possible that the census itself was gender biased as the mere presence of men in homesteads could lead the Allocation Committee to conclude that they were heads of households especially, in the case where the traditional leader⁶³ who accompanied the census team – was not sure who had initially obtained permission to settle in the area. Although the team asked

⁶³ Over time the traditional leaders develop their understanding of history of occupation, but younger leaders who might spend time being educated or working, do not always have this knowledge when they first take on their traditional duties.

the members of the families about this, the weakness was that some of the homestead owners were either absentee landlords or not at home at the time the census was conducted.

Despite these conditions and careful plans, it was neither easy nor straightforward to determine who should be considered the household head. With regard to the allocation of plots, the Plot Allocations Committee had the challenge of dealing with cases involving individuals who disagreed with its decisions; as well as with a number of complicating factors. Individuals, who were no longer resident in the project areas, returned and claimed to be the original owners of particular homesteads. For instance, Mr Msuthu, who was a politician at the time residing outside Moneni, wanted a plot with three households to be allocated in his name, as he claimed that the initial owner of this piece of land was his father. This issue was discussed amongst three families but since no agreement was reached, the traditional leaders had to be brought in to intervene. In this, as in most cases of disagreement, the Plot Allocations Committee would be blamed and brought into disrepute for allocating plots to wrong people. Another instance involved Mr Khabako, a married husband who stayed with his lover in the project area, but did not divorce his first wife. When he died, the wife – though not known by the traditional leaders – came back and lodged an objection concerning the allocation of the plot to the husband's lover. The Plot Allocations Committee and traditional leaders' challenge was that as far as they knew the lover had stayed with the man and therefore 'deserved' to be allocated the land, yet there was no legal documentation to support her against the usurping of the plot by the wife.

Notwithstanding these complications, in general, the Plot Allocation criteria can be said to have mitigated the restrictions imposed on women's access to land by customary tenure. The plot allocation list 2007 shows that out of two hundred and eighty three (283) allottees, sixty-three (63) women (22per cent) were provisionally allocated plots. Although the list does not carry information about reasons why these women got allocated the plots, this study found that allocation of plots to widows was not disputed by the Plot allocation committee (key informants 2009; household survey 2009). However, the Plot Allocation Committee also provided land to some females who did not fall under this category, such as those who went through the khonta system with the assistance of their male relatives. The plot allocation list provides limited information, (allotees' names and plot numbers), making it difficult to ascertain the reasons why some women benefited from the allocation process and others did not.

Nevertheless, the household survey undertaken as part of this study, also serves as a basis for drawing conclusions about women's status in relation to land ownership in the informal settlements. More-so because the data indicates that none of the participants had been threatened with eviction or evicted. This presupposes that they had been provisionally allocated plots. The information about how they came to settle the area originally is useful in this study because it shows the existing, yet unofficial ways through which women came to own land in the informal settlements. A survey of fifty households conducted in Moneni shows that out of the twenty-five (25) women settled in the area, which is fifty percent (50 per cent) of the total surveyed population, ten (10) were assisted by their relatives, five (5) by community members not related to them, nine (9) said no one helped them to get permission to settle from the traditional leaders; whilst one participant did not answer the question.

It was not however possible to draw correlations between the plot allocation list and the household survey for the following three reasons. First, Swazis use multiple and various names, all of which are considered official and may not have used the same names in both the plot allocations and household survey. Second, residents had only been provisionally allocated plots and the Minister of Housing and Urban Development had not yet approved the allocation list, thus, when surveyed residents had not yet received letters of offer from the Ministry; and as such most residents were still not aware of their plot numbers. Thirdly, objections that had been lodged by aggrieved residents were still pending and therefore a few residents were still uncertain of their allocation status. At the time of the fieldwork, the plot allocation committee was revising the allocation list with the intent of sending the new version to the Minister for approval.

Participants in the household survey pointed out that the plot allocation process marginalised women who were not formally entitled to land and not recognised as official by the traditional leaders. The above-discussed nine women who approached the traditional leaders without a male proxy is interesting because it illustrates a violation of customary practice and the flexibility of customary tenure systems. This shows that customary tenure was not always rigid and not necessarily more anti-women than statutory tenure. According to Swazi custom, married women are considered to be minors (equivalent perhaps to their husbands' children) and therefore they cannot enjoy rights in their husbands' territory (WLSA 1990; Rose 2002). The disadvantages of being a married woman and seeking to access property is summed up well by scholars who argue that before marriage a woman is seen as her father's child, whereas after marriage she is considered to be her husband's and then, after his death, her in-laws' child. This perception of a woman as an eternal minor deprives her of the right to control land, thus minimising her chances of improving her financial status and being assertive in decision-making (Meinzen-Dick et al 1997; WLSA 1998; Tsikata 2003; Moyo 2008). According to the WLSA report

(1998), in extreme circumstances, women are chased away from their homes after the death of their husbands or if they are suspected of having committed adultery. This contradicts the notion that women's rights under customary law are secure. Under the SUDP, married women were given special consideration and were assumed to be provided for by the plots allocated in the name of their husbands. The only positive difference – which expressly contradicted traditional practices – was with regard to a few select married women who had stayed in the project area and whose husbands had either died or divorced or separated from them. These women were allocated plots independently of their estranged husbands. This category included mainly the women who, as described above, had been granted permission to settle in the areas without the permission of their husbands. This category of women have therefore benefited from the SUDP.

Women who were in polygamous marriages also benefited from the SUDP. Because the Crown Land Disposal Act of 1911⁶⁴ (explained in Chapter Three) had clauses rendering the Deeds Act subservient to it and making it possible for women to own land, under this legislation each one of a husband's polygamous wives (excluding the first wife) was entitled to one plot registered in her name. In the case of these polygamous households, it was impossible for the husband who had two or more wives in different households, to register several plots in his name. This situation compelled polygamists to register plots in their wives' names. These second or third wives have,⁶⁵ upon production of legal proof of marriage such as a *teka*⁶⁶ (certificate), therefore benefitted from the SUDP through this process of land reform.

Kalabamu (2004) cites the case of Botswana which, in spite of gender neutral policies and laws stressing that access to land and housing should be on a first come first served basis, Land Boards and Town Councils are reluctant to allocate married women land. They equate this to women's independence, which in turn reduced men's authority and therefore resulted in the breaking up of families. Similarly,

⁶⁴ The term Crown land refers to any land owned by the government. According to the Crown Land Act 1911 the Deed Registrar has to keep a special register(s) where all leases of Crown lands shall be registered.

⁶⁵ In Moneni the most common type of polygamy was that consisting of two wives. This category of women (second wives) benefited in Zimbabwe in the Mwenezi cluster, where some wives of polygamous men were allocated plots because of speculation strategy to secure land for male heirs (Scoones et al 2010).

⁶⁶ A Teka ceremony is a traditional marriage whereby a bride is taken to the kraal by her in-laws and given a spear to pierce the ground as a sign of connecting with all the husband's family members. The bride is also smeared on the forehead with red ochre. A man from the husband's family is then given a specific cut of beef to take with/to the bride's family and inform them about the new changes in the status of their daughter who has become a wife. The teka certificate is obtained from the chief of the area.

under the SUDP, some men did not take this restriction kindly as depicted by the following case of Mr. Dlamini who felt that registering a plot in the name of his wife would undermine his authority:

Mr. Dlamini used to be a member of the Inner Council and served in the important leadership structures of the community of Moneni. He served as a member of the allocations committee too. When the time came to allocate plots to his family, he adamantly rejected the idea of allocating one plot, on which stands a house to his second wife who is childless, in her name. Other members of the allocations committee made efforts to get him to consent to the idea of allocating the plot to his wife; instead he asserted that the plot should rather be allocated in the name of his first wife's son. However, this was disputed by the committee in that the son is not the second wife's child and he might in the long run decide to chase her away. Reluctantly, the wife was ultimately allocated the land against the will of her husband who contended that the allocation was bringing division in his family (interviews, City Council minutes, personal information, 2009). He insisted that once the allocation process has been finalized, he would apply for permission to effect a consolidation of the plots to correct what he considered to be an anomaly.

Another group which traditionally experienced challenges with regard to plot ownership is that of widows because, once their husbands have died, patrilineal male relatives assume the status of being head of the households even against the widows' will. In some cases these relatives determine what access to land the widow can have (Rose 2002). This occurs in particular in situations where husbands had substantial investments and property in land, houses and livestock. Yet, there are various ways in which in-laws and other members of the husbands' lineage seek to undermine widows' access to land. These include accusations of witchcraft, refusals to recognise the marriage as a formal union, and burning any documentary evidence of marriage. Widows may opt to challenge these actions in court, but even if they are successful, their relationships with their in-laws remain strained. The injustices or mistreatment that some widows go through as a result of the patriarchal system, the cultural perceptions and power relations engrained in it. The SUDP explicitly tried to negate these practices through the unbiased policies that it enacted. In the allocation criteria, both widows and widowers are given the right to own land as stipulated under Priority Groups Number 7 and 8, which state that resident widows or widowers, living with or without their children, should be allocated plots.

Although the SUDP accommodated particular categories of women in plot allocations, some women did not see this as an important opportunity or benefit. Rather, they seemed to be content with the

status quo. The case of two widows in Moneni who refused to be allocated different plots on the grounds, on the basis that they did not want to stay in separate plots, illustrates how Swazi women have internalised their minority status and suggests that there may be benefits to living collectively. Another apparent reason for this refusal could be that the women were avoiding building responsibilities. The Plot Allocations Committee informed the widows that another plot would be allocated to them and that one of them would have to relocate to this new plot. Both widows turned down the offer stating that they were happy with sharing the plot they currently occupied, which could also be seen as a reflection of the culture of togetherness enhanced by extended families in Swaziland. A member of the allocations committee tried to explain the benefits to being a title holder, but this did not change their minds. Ultimately, the women resorted to allocating the 'additional' plot in the name of one of their sons. This case is a classic illustration of the fact that Swazi women have been 'conditioned to uphold the very traditions and cultural life that perpetuate their discrimination' (Thwala 2010: 151).

In accepting the gendered focus and working with the SUDP to provide land for wives in polygamous marriages, land for widows and land for women estranged from their husbands, the approach taken by the traditional leaders of Moneni could be said to contain a glimmer of gender sensitivity. The only female member of the Plot Allocation Committee is a single woman who resides in her parental home. She is also a member of the Inner Council, which might be also considered as a positive step for the Moneni leadership to include her in this leadership position. This indicates that cultural attitudes about Swazi custom are not absolutely rigid. An unmarried woman, according to custom, is not highly esteemed; let alone appointed to serve in a leadership role in her community, no matter how brilliant or successful she is deemed to be in other areas of her life. The Moneni traditional leaders' attitudes could be attributed to the fact that a majority of them are educated to tertiary level and have also attended international work-related courses. Three senior Princes hold senior managerial positions in different local organisations, which could also be influencing the way they perceive women. Nonetheless, as the following section shows, even with some traditional leaders' willingness to support the SUDP'S principles of gender neutrality; certain categories of women were marginalised.

6.7 The marginalisation of certain categories of women

The above analysis about the Swazi plot allocation criteria develops the argument that, even though gendered policies were formulated, elements of gender inequality survived. A situation which supports Hall's findings that 'Gender inequality is an intractable problem and a product of legal impediments, and social, cultural, political and economic structures and norms' (Hall 1998: 460).

Moreover, the plot allocation criteria is subject to criticism in that it only considered existing heads of households who had acquired land through *khonta*, or had ‘purchased’ land from the senior prince, thus excluding many women who had access to land through other unofficial channels. For instance, five women (Mesi Simelane, Thabi Tsabedze, Kholisa Zwane, Funeka Ndwandwe and Tsembile Shabangu) who had received permission to build structures on a piece of land owned by a widow at the homestead known as *Marabini*, complained that they were being left out in the plot allocation exercise in spite of the many years they had stayed in Moneni. The reason given by the traditional leadership – whose opinions informed the Allocations Committee – for this exclusion was that these women – and others in similar positions to them – had not followed the proper way of settling and not paid the *khonta* fee, thus they could not be treated as residents of Moneni. They were instructed to pay the *khonta* fee in order to be eligible for plot allocation; which most of them could not afford. As a result, these women were excluded from the allocations list, and during their participation in the focus group discussions, they expressed uncertainty about their future (Focus group discussion 2010).

Another group of women that faced marginalisation was those women who were overseeing homesteads on behalf of absent owners. Although the allocation criteria sought to cater for many different categories (tenants, children and second wives), the limited number of plots made it impossible to provide plots for everyone. Consequently, these guardians were not prioritised in plot allocation. They would have to either continue staying on land they didn’t officially own and be subjected to the whims of the plot owner or get evicted. The introduction of the SUDP and 99-year lease in particular, made many of the absentee landlords realise the increased value of the land and eager to develop or sell the land, a process which might render the guardians landless and in worsened economic conditions.

The failure to allocate land to women guardians or to women renting property demonstrates some of the failings of the Allocation Committee in terms of addressing gender issues. There is evidence that the Moneni Plot Allocations Committee did provisionally allocate land to men who had been staying in their relatives’ homesteads (key informants 2009, personal information), while this similar category of women guardians were overlooked. However, this is not intended to suggest that there were no men who might be landless, but rather that the scale of women negatively affected might be higher. The marginalisation of the above-mentioned groups in the plot allocation process demonstrates the weakness of formal titling in that, in terms of the implementation, it failed to cater for the loss of women’s user rights that were previously guaranteed – or made possible through informal negotiations, by customary tenure.

Although the plot allocations' guidelines recognised the existence of tenants in the area, the SUDP did not have enough plots for all these groups. In Moneni, for instance, there was no chance that this category would ever be considered because only 500 plots were available for allocation, yet the area had 279 homesteads which consisted of approximately 550 households. This limited number of plots was criticised by the residents as inadequate to meet their immediate and future plot needs. Most of the residents, including representatives of Moneni who sit on the plot allocation committee, were concerned that an average Swazi man has more than two sons in his family, thus the two plots allocated to each family were inadequate as it would not allow sons to form their own households when they reached adulthood. Residents also pointed out that they had nephews who, because of circumstances such as death of their sisters or brothers, had been adopted into their families. These arguments reveal Moneni's continued patriarchal tendencies, as their concern is only for their sons' need to have future access to plots of land. They also reveal the material constraints to a development approach that sought to improve conditions for poor people and address gendered concerns. Ultimately, there simply was not enough land to give everyone title deeds to plots and choices had to be made. These choices often involved decisions which – despite the SUDP's best intentions – undermined or overlooked women's position in society generally and more specifically and perhaps importantly within the context of land allocation. As the following section will demonstrate, this was particularly evident in relation to adult women living with their parents in Moneni.

The exclusion of female adult children

In the case of informal settlements involved in the urban development project, the Plot Allocation criteria allowed – in theory – each homestead head to register offspring as beneficiaries that would be allocated plots by the project under the supplementary allocations. Given the limited number of plots available, household heads were generally allocated only two plots, except in instances where the homestead was very big and subdivided into many developed plots. In such cases, one plot was allocated to the household head who, in turn, was given the leverage to decide which of his or her children should be allocated the second plot.⁶⁷ In compliance with the order of allocating plots, most families designated the eldest son to be registered as the absolute owner.

⁶⁷ In such a situation where the adult children had already built their houses on their parents' plot and the layout plan showed a high number of subdivisions, the adult children were allocated those plots because the government wanted to minimise resettlement and compensation costs.

According to the Allocation Policy it was necessary to give first preference to the son who already had a house on the plot and thereafter land could be allocated to either sons or daughters. In practice, however, most families opted to register their adult sons whether eldest, middle or youngest. Very few families recommended that the plots be allocated to their daughters. Even in instances where adult daughters were household heads, it was difficult to allocate plots to daughters as their brothers objected. Thus, the fact that the SUDP did not use gendered concepts or language to determine plot criteria and allocations meant that, for the most part, sons were allocated the additional plots. There were, however, some instances where the same use of neutral, non-gendered criteria worked to women's advantage. Those women who had already built houses were saved by the allocation guidelines, which stipulated that first preference needed to be given to those who had built a residential structure. In a few select instances, daughters were selected for plot ownership as they were more financially independent and doing much better than their brothers; and were as a result, seen as the bread winner in the family. This also occurred when sons were considered to be irresponsible or had other impairments that hindered their productivity. All these exceptional cases – in which women benefited from the gender-neutral language of the project – were vehemently opposed by men. In one focus group discussion the men complained that plots were taken away from 'rightful' sons and given to their rich sisters; thus causing tension between the brothers and sisters and undermining the broader intentions of the project to improve poorer residents' living conditions.

Despite the fact that a few adult women living with their parents benefited from its gender-neutral policies, most single women tended to be worse off due to the introduction of the project. Women who did not have good relationships with their male relatives were particularly vulnerable, because the title gives the titleholder, the right to take decisions that best suit them and, as indicated above, these tend to often prioritise men at the expense of women. In the light of the new allocations, some women – particularly those on bad terms with their natal families – faced the possibility of being chased away as other family members feared being forced to allocate their plots to these daughters. Ironically, some of these women had invested in the properties already because they had considered themselves as having a safe place in the homes of their parents. However, the registration of a plot in the name of their brother could potentially leave them landless depending on their relationship with their male siblings.⁶⁸

⁶⁸ This tends to support research in India (Mehta 2010), which shows how a resettlement project which introduced changes in tenure, also disrupts informal and kinship networks leading to a state of insecurity and crisis.

6.8 Resistance to a gendered approach

A vast gap remains between stated principle and State practice despite the introduction of the Constitution promising equality as a fundamental right (Agarwal 1994). Given the predominance of cultural beliefs and laws that sought to prevent the discrimination of women in property ownership, the SUDP's gender-neutral policies drew the resentment of many men in the project areas. This reinforces the assertion that development planning normally overestimates the benefits of policy and underestimates resistance to social change (Hall 1998). This is not unusual in patriarchal societies, and as an exploration of a struggle over land in the Mbari community of Murang in Kenya shows 'women's control over land is viewed as an explicit and immediate threat to the balance of power within households' (Mackenzie 1990: 635). In the Moneni area, male residents (interviews 2009) complained that some of the males eligible for plot allocation were aggrieved because plots had been allocated to their sisters rather than to them. They explained that they did not understand the logic behind the allocation of plots to women because the beneficiaries were either divorced or never married; hence, their very presence in Moneni and at their parental home was 'at odds' with patriarchal 'Swazi culture'.

There have been similar reports from other countries, for instance, in Namibia where a Married Persons Equality Bill intended to abolish men's marital power was introduced in the 1990s and was considered as 'an unhealthy western import, being against nature and the bible, anti African, anti customary, destroying the traditional family life' (Hinz in Eekeler and Nhlapo 1998: 143). The same sentiments are generally held by men in Swaziland. Yet, this particular interpretation of Swazi culture which overlooks household heads' obligation to care for the entire family without enforcing exclusionary rights.

These findings suggest that, despite the intentions of the project to improve women's status and the lack of access to land, in practice it tended to be mainly those women who were already economically independent who benefited from the SUDP's gender neutral policies. The women already underprivileged as a result of not having a good livelihood or poor relationships with their in-laws were not given much attention in the plot allocation process, not only because of the limited availability of plots but also because of their economic status. The tensions that arose during the SUDP supports Plateau's assertion that land titling opens up the possibilities of fanning the flames of new conflicts, and serves as an instrument to transfer wealth in favour of the educated, economic and political elite (Plateau 2000).

The Moneni Development Initiative (MDI), an association comprising mainly progressive young people who challenge the traditional leaders on land ownership issues, continue to show patriarchal perceptions. For instance, in an interview with some members of the association, their concerns about the

SUDP focused on men's concerns and undermined women's potential to claim land. Intricately linked to this perception of women by the youth, is the notion that women in Swaziland are discouraged from participating in public life, and should instead be encouraged to play a private role rather than occupying key decision-making positions such as political positions (WLSA 1998; Thwala 2010) or even other positions of influence in society.

In the case of Moneni, the Inner Council played a crucial role in plot allocation in SUDP as it identified household heads for land distribution, and resolved land-related disputes including those between families and neighbours. This Inner Council was male dominated, with only three female members, including Mrs Simelane, Mrs Ntshakala and Ms Msibi, and only the latter two being active members. The third member, a middle-aged woman, was appointed because of her position as an educated civil servant, and she was seen in the role of a resource person because she was more knowledgeable and well-versed with the operations of the government administrative procedures. Prior to her appointment, Ms Msibi used to be vocal in meetings giving insights about the project and also asking the leaders informed questions. Subsequently she was appointed to be a project outreach facilitator and expected to disseminate information between the project and the community. Upon the death of one member of the Moneni Plot Allocations Committee in 2007, the Senior Prince appointed her to replace the former and also to sit in the Inner Council as a member. Mrs Simelane stated that she decided to play a passive role on the committee because she was not happy with the manner in which community issues were being handled, especially, since the introduction of the SUDP. In particular, she was dissatisfied with the plot allocations which she believed favoured men to the detriment of women, thus rendering women marginalised (interview 2010).

Clearly, this male-dominated composition of the Inner Council, coupled with the patrilineal and patriarchal principles, hindered the implementation of the gender policies as the interests of the female residents cannot be fully represented by two women in on a committee of thirteen. This demonstrates women's limited political voice in decision-making concerning land tenure (Whitehead and Tsikata 2003). Exacerbating the challenge was the fact that the Plot Allocation Committee was also dominated by men, only Ms Msibi sat on the committee as a woman representing the community of Moneni. It would be hard for her to fully represent women's interests as the majority rule principle governs most Inner Council discussions. Her argument was that many women remain unmarried or divorced and therefore they should not be seen as being 'in transit' between male authority figures in the area. These factors made it more difficult for Ms Msibi's input to be effective as far as issues of gender were concerned. For instance, her stance was that since it is general knowledge in Swaziland that many women are single and live at their parents' homes, they should be given equal treatment to men in land allocation but she could

not get support from the traditional leaders. This lends support to other research findings that local authorities practise gender discrimination in land titling (Lastarria-Cornhiel 1997), thus preventing women's ownership of land, which in theory the statutory laws offer, even though women might participate in the local authority structures. The male domination of committees also reveals that, in the process of formalising land registration and titling, men gain new rights, which enable them to go before the formal apparatus of the state to make further claims to land (Bruce and Migolt-Adholla 1993; Shipton and Goheen 1992).

In addition, and going beyond the gendered structures evident in the Inner Council and Plot Allocation Committee, was the fact that the majority of the project officials – which included managers, planners, engineers, and other technicians involved in the planning and implementation of the project – were men. In the case of Moneni, only two project officials were women, with one only involved as a head of the department as and when major decisions had to be made, and this demonstrates the weakness of the SUDP in spite of the non-gender blind policies.⁶⁹ The apparent inadequacies in this area demonstrate that changing the legislation without an accompanying change in attitudes and cultural beliefs will not improve the status of women (Lastarria-Cornhiel 1997; Daly 2001; Kalabamu 2004).

Resistance to the gendered policies also manifested in compensation issues despite the existence of the Resettlement and Compensation Policy, which stipulated that women and men should be treated equally in the SUDP. However, having said this there were occasions when, contrary to expectations, compensation disputes in the project area favoured women rather than men. The following case of Mr. Makhubu and his ex-wife indicates how, on the one hand, the minority status men accord to women, and the close association between men and land. On the other hand, it exposes a change of attitudes on the part of the traditional leadership of Moneni who supported the wife in the wrangle, as set out below:

Mr Makhubu is a divorcee in his fifties and the land he believed to be his property under communal tenure were affected by the Urban Development Project and included fruit trees, drainage and a septic tank. He was aggrieved because compensation for the vegetation was given to his ex-wife, Hlelile Ngcamphalala whom he had separated from twelve years previously. The traditional leaders said that Hlelile had always been the one who stayed with the children born

⁶⁹ This gender bias is also reflected in the political positions held by Swazi women at national level, for instance the proportion of seats occupied by women in parliament is only 22 per cent compared to 78 per cent occupied by men (UNDP 2012).

out of their marriage and had paid their school fees as Makhubu was unemployed. It was therefore believed that the ex-wife would put the money to productive use compared to Mr. Makhubu. He believed that the decision to give compensation to his wife was a solitary decision by one member of the Inner Council. He was also embittered because the ex-wife was no longer staying in the house or even in the Moneni area. Mr. Makhubu lodged complaints with the following individuals: the Headman of the area, the Manzini City Council, the Moneni Allocations Committee, the Ministry of Housing, and the Swazi National Court⁷⁰ but all this was a futile effort. The City Council had paid compensation to Hlelile as per the recommendation of the traditional leaders. Ultimately, Mr Makhubu lodged his grievance with the High Court through his lawyers where, in May 2010, the case was still pending. He insisted that he wants the Government and Council to refund him all the compensation for his vegetation which they unlawfully gave to his former wife.

Mr Makhubu believed that he was unfairly treated by both the modern and traditional authorities who decided that compensation should be granted to his former wife. He blamed the MHUD and city council for adhering to the recommendation by the traditional leaders without doing proper investigation. He also thought that by virtue of being the owner and a man, he was supposed to receive compensation as per 'Swazi custom'. He asserted 'A wife does not inherit her husband's properties when he is still alive, a homestead belongs to a man who is the head'. Mr Makhubu's grievances and demand for compensation for his vegetation may also stem from the fact that he was not allocated the plot on which he lives. This was because the traditional leaders said that a late Mr. Ndwandwe, who was Makhubu's uncle (his mother's brother), owned the land. Therefore the traditional leaders contacted Ndwandwe's sons to decide who should be allocated the plot and indeed, it was allocated to one of the Ndwandwes.

The case illustrates a gradual shift in customary practice in that the traditional leaders ruled in favour of the ex-wife, a very rare occurrence as males according to Swazi custom are considered to be the head of households and in this respect, owners of all the properties (Kuper 1978; Rose 1992; WLSA 1998). The granting of compensation to Hlelile by the government and at the recommendation of the traditional leaders seems to be astounding given the culture and practices explained above. Yet, prior to

⁷⁰ The Swazi National Court was established by the Swazi Courts Act of 1951. Members report to the Judiciary committee though for administrative purposes it is located within the Regional Administrator's Department, which deals with cases that fall under Swazi customs and law.

their separation, Mr Makhubu's wife was the one who consistently had a stable job, and thus she was seen by the traditional leaders as the one who had been investing finances in the home. It is alleged that Hlelile also reported her marital problems to the traditional leaders, citing abuse as a major problem, which the leaders tried to prevent, but to no avail (key informants 2009). Mr Makhubu therefore had a bad reputation for being disrespectful to the elders and of not behaving appropriately. Most importantly, the traditional leaders explained that the couple's six children stayed with the ex-wife after the separation, and that she provided for all their needs, hence, they felt she should receive the compensation. Despite strong cultural associations between men and land, this case shows traditional leaders' concern with broader living conditions and with community wellbeing. Their stance on women, power and land is thus not rigid and uncritical. This also demonstrates the flexibility of customary tenure systems discussed in Chapter One.

6.9 Conclusion

This chapter examined how the SUDP's approach and the use of gender neutral policies formulated at the beginning of the project failed to advance land ownership for most women in informal settlements. In so doing, this chapter has clearly demonstrated the need for urban development initiatives to be gender sensitive, as urban space is contested by both men and women (Robinson et al 2004). In the process, the chapter has also challenged development planning which fails to formulate better strategies to translate gender policies into practice and the lack of participation of women in policy decision-making. In line with empirical evidence from other African countries, this chapter has demonstrated the disjuncture between gender policies in land reform and practice (Hall 1998; Robinson 2004; Moser 1989). The SUDP's approach and the gender-neutral policies formulated at the beginning of the project had minimal positive influence on land ownership by women in the project areas. I assert that this was, in part, due to the failure to translate these policies into reality. The limitation can also be attributed to the customary and statutory laws of the country – which considers women to be legal minors (Armstrong and Nhlapho 1983; Forster and Nsibande 2000), thus perpetuating the gender inequalities through structures and processes discussed in this chapter. This chapter has also shown that the impediments to SUDP gendered approach implementation were the attitudes and perceptions of various categories of people such as ordinary men in the project area, Plot Allocation Committee members and urban authorities involved in the SUDP and in positions of power. As is the situation in other countries, these perceptions and attitudes are embedded in and nurtured by cultural practices (Mackenzie 1990; Argawal 1994; Grey and Michael 1999; Whitehead and Tsikata 2003). Instead of the gendered approach resulting in equity in land distribution, it has reinforced male hegemony and existing forms of gender inequality through the

male-dominated committees established to implement the SUDP. These negative effects are comparable to other experiences of land reform programs in rural areas of Africa where oppressive gender practices were further entrenched (Hall 1998). Under the SUDP, patriarchal practices were reinforced and this worked against the intent of the gender neutral policies. The failure to assess the dynamics – both formal and informal, institutional and cultural – that impact on urban development has adversely affected the SUDP gender initiatives (also see Peters 2004). The SUDP therefore failed to promote gender awareness in the structures overseeing and monitoring implementation of the project. This oversight could be attributed to the development planners' lack of training on gender issues, which goes beyond gender sensitisation, and their failure to uncover 'all those hidden and taken-for-granted ideas about gender that are brought into development planning' (Kabeer 1991: 192). Patriarchal attitudes and perceptions reinforced by customary and, to a certain extent, statutory law compromised the implementation of the SUDP policies and its ability to substantially address the discrimination of women. Thus, the findings of this study revealed that many women did not benefit from the project and instead risked losing their title to the plots they occupied should they decide to marry. Addressing these women's structural position in relation to land titling and plot allocation procedures requires a review of relevant legislation and bringing this into harmony with the constitution which advocates for gender equality in land ownership. However, changing the legislation without an accompanying change of attitudes and cultural beliefs, will not in its own right improve the status of women. As suggested by Daly in the opening quote, legislative intervention cannot, on its own, secure independent and effective rights to land for women. Rather, legislative intervention needs to be enforced both socially and culturally, and to be accepted, in order to bring about change (Daly 2001).

However, not all women suffered under the SUDP and some women were able to benefit and secure access to land, using diverse tactics and approaches. While men seek to shore up their access to land, women are not, as this chapter has demonstrated, passive actors in land ownership and they too find strategies and ways to own and protect land (Hall 1998; Rose 2002; Robinson et al 2004). On the whole, educated and wealthier women tended to be more aggressive in claiming land ownership under the SUDP, because they could afford legal fees and they enjoyed an asymmetry of information about their rights compared to the less well-educated and poor. Women are not homogeneous but are differentiated by class, religion, culture, age, and life-cycle (Moser 1993; Robinson et al 2004). Although the SUDP did not pay much attention to the different categories of women, its use of gender neutral language benefited some women resident in the project area, particularly widows and a small number of unmarried women who were economically independent. Widows were treated as heads of homestead and did not have to fight for this right as is normally the case under Swazi customary law (The Draft National Gender Policy

2006). There were also select families who resolved to allocate plots in their daughters' names as these women were financially independent and acted as bread winners for the family, and, in so doing, the families neglected their sons with no reliable source of income. The chapter also examined particular incidences when traditional leaders did not automatically privilege men over women, and took factors associated with residents' wellbeing into consideration before allocating land to women. Since such informal institutions influence the involvement of women and men in development programmes, despite formal mechanisms to promote gender balanced processes (Robinson et al 2004), it is necessary that development planners involve them early in the planning stage. Policy by itself cannot remedy the deeply rooted gender bias acquired over several decades and reinforced by the laws, processes and structures as depicted by the SUDP.

Chapter Seven: Swaziland land tenure systems and urban development: Conclusions and implications

Urban scholars have realised that significant discrepancies exist between goals and expectations surrounding urban development interventions implemented by governments and their impact on the intended residents of informal settlements. With regard to urban development, grandiose plans, which are based on high modernism are widely implemented, despite their adverse effects on the intended beneficiaries (Scott 1998). This high modernism also manifests in upgrading schemes, which tend to promote privatisation of land tenure and high infrastructural standards for town planning. As Martin and Mathema (2010: 100) note, ‘if the initial assumptions are wrong, then the results will also be wrong’. This type of development, promoted in developing countries such as Swaziland, is attributed to planning systems inherited from colonial governments (Stren et al 1993; Rondinelli and Cheema 1988; Scott 1998; Payne 2002; Robinson et al 2004; Watson 2009; William et al 2009). The urban authorities – concerned with their commercial and administrative interests – have emphasized elements of modern statecraft such as zoning laws and infrastructural developments (Scott 1998). Ironically, these authorities, alongside politicians and development planners, are also concerned with order and beauty rather than with addressing poverty and inequality. As this dissertation shows, post-independence states have not been able to reorient urban development in order to benefit local, and poor, residents. Instead, urban development programmes and projects are not only ill equipped to address the pressing needs of informal settlement residents, they also fail to put the development of residents first in their agenda.

Whereas the proliferation of informal settlements is associated with failure of the public sector, legislative frameworks and the economy to provide housing especially to the poor (Huchzermeyer and Karam 2006), efforts by governments to control the spread of these settlements have been equally unsuccessful. These settlements are often characterized by poor health and degraded environmental conditions due to the fact that cities not only lack the willingness to provide services to the settlements, but also have a narrow revenue base (Rondinelli and Cheema 1988; McGranahan 1993; Rakodi 1997; Bolay 2006). Exacerbating the failure to improve the conditions of the informal settlements in developing countries is the fact that attempts to control and upgrade unplanned settlements are based on conventional development processes. Such processes do not fully represent or address the complex problems, experiences and needs of the people in these settlements (Hardoy and Satterthwaite 1989; Farvacque and McAuslan 1992; Scott 1998; Pieterse 2008; Todes 2011). This study provides empirical evidence of this ‘logical disaster’ of the development process, as it is referred to by Martin and Mathema (2010:81),

through the use of the Swaziland Urban Development Project. This has been described as a logical disaster in the sense that development planners supported by the government and by international organisations have engaged in systematic project preparation phases which omit the intended recipients of development. The project phases include setting up project coordination offices, signing loan agreements and engaging consultants to conduct pertinent studies and prepare technical reports. With these 'well thought-out' plans and programmes, an assumption could be that relevant and local contextual based development strategies will be implemented, but as shown in the Swaziland example, this is not usually the case. Project implementation is characterised by a series of 'logical' processes and actions – logical from the planners' perspectives - meant to promote smooth implementation and attainment of objectives. In spite of this, empirical evidence demonstrates that projects implemented under these 'logical' processes and actions in both rural and urban areas sometimes end up failing to benefit the targeted beneficiaries and this qualifies these development processes as 'logical disasters'. This is illustrated in the Thaba-Tseka agricultural project in Lesotho which failed because development planners used a technocratic approach while neglecting the politics which were interwoven into the project and which ultimately crippled the project. Similarly this study found that the SUDP had many unintended effects, as discussed in Chapters Four, Five and Six, which were as a result of only partially addressing the local politics. The failure of the SUDP to build replacement houses for the relocated residents was a disaster in the sense that some of the affected residents spent the compensation on other immediate needs rather than investing in housing. For example, the use of the term 'logical disaster' does not negate the fact that there are some benefits that accrue from development projects, such as the provision of electricity in Moneni. As indicated by this study development planning that does not take into consideration the realities of the poor, their political, economic and contextual issues is ill-equipped to improve the conditions of the poor regardless of how logical or systematic the approaches. Consequently, such development projects may end up benefiting an unintended category of people such as the middle class. Moreover, the failure of the MHUD and the urban authorities to genuinely engage the Moneni traditional leaders in planning stage shows disastrous effects as detailed in Chapter Four and Five of this thesis. These effects included stalling the project for a decade, an indefinite building embargo preventing residents from investing in the land and project costs escalation. In addition the plot allocation process has dragged for more than a decade and the contestation between the traditional and urban authorities has continued leading to residents' confusion, uncertainty and insecurity as well as creating unhealthy divisions in the community; all these had negative impact on the residents. A lesson that can be drawn from this experience is that if the development planners had firmed up their commitment to negotiations in the beginning of the project, the planning needs of the community would have been better captured and possibly appropriately addressed thus, minimising the adverse effects of the project.

The introduction of the 99-year lease in poor communities also indicates inappropriate urban development and regulatory legislation formulated by policy makers and development planners, which has had the effect of inflating the costs of land for the poor. This study therefore has demonstrated that security of tenure is not possible for most of the urban poor under the 99-year lease. The increase of investment, envisaged by the development planners as a result of the 99-year lease and supported by scholars, is fallacy for the urban poor. Rather, the argument that privatisation of land tenure promotes investment, fails to consider the plight of the non-affording class in the informal settlements. Indeed, policies that favour the non-poor and the moderate poor do not benefit the extreme poor (Lawson et al (2010). For this group, constrained economically and unable to afford the plot price, development was, in effect, the promotion of de-investment as opposed to investment. De-investment because they had already made some kind of investment in the property where they were settled, whether unofficially or, as urban planners and government officials enjoy saying, ‘illegally’. Based on the research conducted for this dissertation, I assert that the privatisation of tenure in communities consisting mainly of poor residents is a systematic and logical process by which the urban poor, especially, the poorest, are pushed further into the abyss of poverty. The issue of cost recovery, a systematic way of recovering plot costs, with its calculations based on a mathematical formula, is indeed appealing to the intellect but when considered from the viewpoint of poor residents, its ability to add value to the poor is subject to criticisms as illustrated by Chapter Five. This argument does not advocate for the creation of a dependency syndrome through the provision of free services, but questions the SUPD’s idea that all residents, including poor residents, are able to pay all the costs of physical infrastructure. Full realisation of the cost recovery principle as anticipated by the SUPD is, in sub-Saharan Africa, as distant as the Mount Everest. This study has provided additional empirical evidence to other scholars’ findings on the same phenomena (Sanyal 1987; Ndulu 2006; UN-HABITAT 2011) and has argued that the poor are unable to benefit from urban development initiatives. Revealing the adverse effects of the development process is not only morally right but also continually shapes the development process itself, striving for better ways of dealing with poverty.

In this study, I explore the interaction of the traditional and urban authorities (as custodians of customary and statutory tenure systems) in the context of SUPD and its effects on residents of informal settlements. The Swaziland, government is, through the Ministry of Housing and Urban Development, formalizing informal settlements based on the above-described conventional approach, with an emphasis on the privatisation of land. By so doing, the government hopes to improve tenure security and investment. However, as this study reveals, problems arise as the government fails to take into full consideration the uniqueness of the local context; overlooking, in particular, how Swazi customary tenure

system and its administrative structures have developed over time. It also fails to consider the coexistence of the traditional and urban authorities in the urban area and overlooks the fact that residents see traditional authorities as legitimate leaders.

This study found that these western-inclined development interventions, such as urban development projects implemented in informal settlements, yield limited positive effects. Instead of leading to improved urban residential conditions and enhancing development, the SUDP resulted in residents being caught up in contestations over authority. Such a situation infringes on residents' freedom to improve their living conditions, and hence worsens their tenure insecurity and poverty, processes which have also been described as 'the deprivation of basic capabilities rather than merely as lowness of income' (Sen 1999). Understanding the interplay of the land tenure systems is thus central to the analysis provided throughout this thesis. It is demonstrated through my exploration of the interrelationship and interplay of the authorities serving as custodians of the customary and statutory tenure systems and through discussion of how the 'unhealthy' interrelationships between these authorities negatively impact on the residents of the informal settlements.

This study also calls into question the role of the World Bank and similar international organisations, which offer loans for the schemes that are based on inappropriate standards for the local conditions of the recipient country. This study has examined how the plans funded by the World Bank in urban development are problematic and how, ultimately, they can adversely affect the poor residents of informal settlements such as Moneni. In the case of Moneni, the interrelationship between the traditional and urban authorities exacerbated the negative effects of the upgrading schemes. This was because of urban authorities' lack of timely engagement with the traditional structures that had administered the land for years. Indeed, as this exploration of the SUDP shows, development interventions that neglect local politics and conditions are bound to be negatively received by the intended beneficiaries and poorly implemented.

This study portrays the complex ways in which development projects' inaccurate assumptions are perpetuated by the international character of the planning process, by experts and by the priorities of government officials, including urban authorities. In addition, such projects are based mainly on experiences drawn from projects implemented in other countries. Although some modification is sometimes effected, the bulk of the principles remain standardised, resulting in a juxtaposition of incompatible principles and standards with local contexts. The introduction of the 99-year lease is an example of such modification; which the government believes will give residents land titles while retaining the customary practice of not selling the land. However, as I demonstrated, this is not how poor

people interpreted the 'plot price', nor how they responded to these newly created 'opportunities'. Although designed to assist poor people and secure access to tenure for them, it also created problems of affordability. Implemented with the intention of making residents secure, this study shows the opposite. Poor people became insecure because they could not afford the plot costs and property rates and thus stood to potentially lose the land they had access to. Ironically, in Moneni, informal settlement residents considered customary tenure to be more secure than the 99-year lease, and thus expressed their preference for it. Informal settlement residents also resisted the principle of cost recovery which they equated to buying the land. They saw the principle as an apparent contradiction to the Swazi government's statement that the land was not to be sold. Of course, not all informal settlement residents were dissatisfied with urban development. Certain middle-income residents such as professionals and entrepreneurs took advantage of the new system of tenure because they could afford the costs and were therefore able to invest in and develop the land they occupied.

This study has also demonstrated the diverse notions that international organisations, states and intended beneficiaries hold regarding what they consider to be 'development'. Under the SUDP in Moneni, high design standards were implemented, for instance new roads were constructed to international standards. Although residents appreciated the roads, roads were not considered to be 'development'. Instead, the residents expressed their resentment towards the project, and especially towards the government, for having taken away part of their fields and for depriving them of the privilege to grow crops, to have land and to extend or build new houses. For the informal settlement residents, 'development' was access to land and the ability to make one's own decisions around economic activities and building residences. For them, the fields were more important than the expensive and beautiful roads. This contrasted with the planners' and politicians' vision of a planned city with wide, tarmac roads and high mast lights, a vision, which combined infrastructural standards with added beauty or glamour. For them, these were the things that made Manzini a beautiful, and governable, city.

The different vision of development held by informal settlement residents was also reflected in that, during the early years of the project, they requested that the Minister of Housing and Urban Development invest SUDP funds in the establishment of commercial businesses in Moneni in order to improve their economic status. For them, business, and skills were more important than fancy roads. This issue of investing SUDP funds in a commercial area was not seriously considered because community residents were not part of the planning process. The Moneni community's vision of development, and their focus on economic opportunities that they could control, challenges the assertion of Hardin and Desoto that customary tenure system is an impediment to development (Hardin 1968; Desoto 1989). Instead, residents, including traditional structures, do, seek better ways of improving their economic

conditions and hence development planning needs to factor these into their plans and programmes.

Throughout this dissertation, we see that development planning in Swaziland was more concerned with order and implementation of complex plans than with devising enabling processes or addressing poverty and development issues. This thesis argues that if development initiatives are to be effective in alleviating poverty, the role of urban development planning needs to be seriously reconsidered. It is the failure to address the concerns of the residents, and the failure to directly tackle questions of poverty, that leads residents of Moneni to insist that ‘there is no development in the area’, in spite of the introduction of policies aimed at making the project relevant and affordable.

The introduction of policies included gender-neutral policies was intended to improve women’s access to land. During implementation of the SUDP, it became apparent that Swaziland’s approach to gender issues suffers from similar kinds of oversight. There is a disjunction between gender-neutral policies and their enforcement. Women did not get the full benefits of the policies because they were poorly implemented. The failure of governments to enforce the gendered-land legislation is a concern as is frequently observed by scholars (Mackenzie 1990; Moser 1993; Argawal 1994; Deere and Leon 1997). In the case of SUDP, the plot allocation process was rife with patriarchal tendencies. For instance, at familial levels, women were marginalised by their brothers because they are considered to be ‘in transit’ between fathers and husbands. However, the Swaziland Government and the World Bank took pride in the preparation of the legislation intended to allow women to access land. Although the list of legislative and policy reforms undertaken under the SUDP appears impressive (see Appendix 1), it is a major flaw to use this as a measurement for the success of the project, as it overlooks the fact that the availability of legislation and policies is valueless if it is not implemented or not translated into practice. Thus, in contrast to many other reports on the SUDP, this study explores what lies behind the accolades enjoyed by the Swaziland Government. In keeping with Martin and Mathema (2010: 94) who assert that ‘success stories also have a potential for photo opportunities and run the risk of being overstated’, this study emphasises the importance of measuring actual change on the ground, rather than focusing solely on legislative reform.

The SUDP had many unintended effects on the residents which is the trend for most projects (Ferguson 1994). These unintended effects are a sign of underlying problems, which this study attributes particularly to the unhealthy interrelationship between the traditional and urban authorities. It is, as Williams et al have argued (2009: 17), ‘important to evaluate the inspirations, content and outcomes of particular visions of development carefully rather than celebrating or demonizing it as a whole’. Development planners have a tendency to underestimate the local contexts, even where studies (which

they invested a lot of resources in) have pointed to these local contexts as potential threats to the proposed development projects. For instance, had the development planners taken seriously the SUDP studies which indicated the roles that traditional leaders played in the informal settlements and in land distribution and had they devised better strategies to address the issue, many of the challenges discussed in this thesis would have been prevented. Instead, the urban authorities assumed that they would supersede traditional authority as is mandated by statutory law. In the SUDP, this assumption still lingers amongst the urban authorities, some of whom have suggested that traditional structures in the informal settlements should not exist in urban areas, while others have denied their legality, as statutory law does not provide for this. However, as shown in this thesis, the urban authorities were compelled to compromise and engage with the traditional leaders. This issue of contestation over legitimacy and authority has led scholars to argue for reconciliation of informal and formal tenure systems, believing that this will lead to cooperation between the traditional and urban authorities (Mabogunje 1992; Toulmin and Quan, 2000; Rakodi 2001; Durand-Lasserve 2002; Peters 2004). Yet, as the SUDP case makes clear, cooperation will neither be straightforward nor occur readily. Rather it will require long, drawn out processes of negotiation and compromise that take into account local politics and vested interests.

It is this tendency to neglect local political context in development planning that attracted Rakodi's criticism of planning and his promotion of the principle of governance through the article 'Forget Planning and Put Politics First' (Rakodi 2001). In keeping with Rakodi's argument this study does not entirely reject urban planning but rather, argues that utmost attention should be paid to the politics of land ownership before implementation begins in order to increase project acceptance and success. It is clear that projects – such as the SUDP – will suffer as a result of contestation over land claims and this demonstrates the role of politics in development while also emphasising the need to address such issues. In the case of the SUDP, had the MHUD fully examined the issue of authority over the area of Moneni during project preparation, the tensions between traditional leaders and urban authorities may have been averted. In addition, the fact that the MHUD was able to bring together the MHUD, the Regional Administrator, Manzini City Council and traditional leaders to solve the impasse and project stalling in January 2007 (explained in Chapter Four), is a sign that this strategy could have worked well as an approach throughout the implementation of the SUDP. There were a few additional meetings held at the Regional Administration Office about the challenges of traditional and urban leadership and ownership after project initiation that also sought to address the politics of authority. However, by this time the project had been planned and the urban authorities were not willing to compromise on the issue of authority. If they had employed the approach of allowing the project to be implemented while discussions on land claims continued (as was done briefly in January 2007), many of the unintended effects may have been prevented. These include the project being stalled for a decade, the

escalation of project costs, and the fact that residents were prevented from developing their land by the building ban introduced by the MHUD in 1992. However, the assumption that the development planners had about the issue of authority, namely that the City Council is legally the controlling authority (see Chapter Five) and that the traditional leaders could be overlooked, acted as a disincentive to greater discussion and exploration. It was not until January 2007, when the project had been halted for a decade, that discussions of this nature took place. This study therefore advocates, in its exploration of the complexities that result from trying to avoid addressing informal arrangements of authority and political leadership taking explicit cognisance of the local contexts. It further argues that the conventional approach discussed in Chapter One, which is used by development planners, leads to marginalisation of the poorest segments of society and worsens their living conditions. Depriving the poor from accessing resources and services has come about as a result of diverse political systems and bureaucratic structures discriminating against the poor. It is therefore necessary to build closer and more open relationships between politicians, officials and grassroots leaders to make development activities and outcomes favourable (Mitlin and Satterthwaite 2004).

I propose that appropriately addressing politics requires different phases for land tenure issues and for infrastructure, preferably with the former being the first phase. Drawing not only from the findings of this study, but also from my previous experience as a Development Official with Manzini City Council in Swaziland, I argue that this requires availability of an adequate budget for the preparation phase. This funding is necessary to meet the costs associated with holding consultative meetings with concerned stakeholders and workshops. Such activities should all be done under the land tenure phase. The prevalent approach – of addressing land tenure issues simultaneously with provision of services or of overlooking tenure issues completely – is a hurried, ad-hoc and less fruitful approach because project officials operate under a tight project schedule and budget. Such a combined approach deprives residents of intensive education prior to project implementation, which is an exercise that could potentially enhance project acceptance and the application of the cost recovery principle. Such educational endeavours or programs should cover land ownership, building procedures, property tax, and even the options available for infrastructure standards. Working with residents to explore the options available could enable residents to make a more informed decision regarding the level of services they can afford. In Moneni, the lack of timely education about these components led to a few influential and relatively wealthy residents easily taking control and advocating for the provision of expensive services which were unaffordable to the urban poorest residents. As discussed in Chapter Five, however, most of the residents had little information about the project as, even during project implementation, urban authorities were restricted from holding meetings with the community by the Moneni traditional leaders. Alternatively, discussing residents' views about the options available at an early stage of the project could also lead to revising the

options; in the light of residents' own perspectives of what needs to be included as development thus avoiding a gap between rhetoric and reality observed by Burns and Taylor (2000).

I argue that traditional leaders do not have to be excluded from urban development projects. The new role that they could assume in a post-project implementation era would have been deliberated upon and possibly resolved during the land tenure phase. An extended land tenure phase for consultation with traditional leaders and the community may sound like additional project costs and delay in projects, but has to be weighed against the disagreement over traditional leaders' role and authority which derailed the SUDP's implementation for a decade. The empirical evidence presented in this study indicates that the development planners overlooked factoring the traditional leadership structure into their plan because of the assumption that the Council would be the authority controlling development and collecting property tax in the area. As a previous Council official who was, for almost a decade directly involved in management of informal settlements, I recognise that this insight and accompanying proposal to embrace traditional leadership has legislative and practical implications. From a legislative view, the urban government laws such as the Urban Government Act 1969 and other development frameworks analysed in previous chapters do not accommodate the traditional leaders in the urban areas and these are anomalies which need to be addressed to align with the reality of the local context. This is necessary because as towns and cities grow there will always be such traditional structures consolidated with the urban boundaries, unless the MHUD declares zero- urban expansion, which would be hard to retain given the rate of rural –urban migration in the country. As the urban boundary is made up of areas initially defined as rural areas and declared urban at different intervals; there will always be traditional leaders' land being incorporated into urban areas. It is appalling that there is still no commitment made to synchronise customary law with statutory law, thus legalising existence of traditional leadership within the urban context. Neglecting the review of urban land-related laws and other pertinent legislation will see the urban authorities engaging in perpetual fire-fighting over land issues and, thus, render them incapable of improving the poor's livelihoods through development programmes.

Clearly, traditional leaders are reluctant to relinquish their authority, which they have exercised over these areas for a long time. The empirical evidence and insight provided by this research suggests that the government of Swaziland needs to be prepared to invest financial and technical resources into reviewing the urban legislations and finding ways to accommodate traditional leaders. Scholarship has noted the importance of taking into consideration the local context in development planning, especially, of the informality existing in developing countries urban areas (Mitlin and Satterthwaite 2004; Pieterse 2008; Martin and Mathema 2010). Reviewing the legislation would provide an opportunity to redress colonial-inherited laws which are incompatible with the conditions of Swaziland and many African countries. It is frustrating to recognise, in this analysis, that four decades have elapsed since Swaziland

obtained its independence from the British Colonial Administration, but still no adequate commitment has been made towards reviewing the laws to suit the Swazi local context. Historically, administrative centres were developed to serve colonial interests and tailored to meet their entrepreneurial needs rather than those of the Swazi. Given this historical fact, the government might wish to consider making a commitment to incorporate traditional authority structures into its urban land management structures rather than considering them an impediment to urban development (National Housing Policy 2001; Peri Urban Growth Policy 1997; Swaziland National Physical Development Plan 1996-2006; Swaziland Poverty Reduction Strategy Programme 2006). The tendency of the urban authorities to overlook and consider irrelevant those traditional authorities existing within the urban boundary fails to recognise that customary laws and statutory laws will continually contend for supremacy in the urban gazetted areas. Consequently, it will remain a challenge to eliminate the traditional authority and these leaders should not be seen as an impediment to development. As Chapter Six shows, traditional authorities can play positive roles in relation to gender and development. Evident in this thesis is the fact that contestation over the issue of authority cannot be overlooked since it is not only unrelenting, it also has negative impacts on residents of informal settlements, and thereby undermines development.

In practice, engaging the traditional leaders in discussions on land use and urban development, especially post implementation stage, will not be a straightforward process. However, and as observed in Botswana's land Management Board⁷¹, it is possible to include traditional leaders in urban land management not just during project implementation but also permanently. Putting politics first and finding ways to incorporate traditional authority within urban context, should not be seen as merely describing the issue of who is in control or engaging in political behaviour. Instead, politics has to be conceptualised to cover relationships, institutions, processes and actions considered political (Warren 1999). Such an approach encompasses the involvement of the different institutions whose functions are elucidated in earlier chapters of this thesis, combined with an analysis of processes and actions.

The uniqueness of this study lies in that I examine the interaction between the traditional and urban authorities using a conceptual approach based on politics and actors. This has enabled the study to capture the relationships institutions, processes and actions involved; hence, demonstrated the impact of the interaction on residents of the informal settlements. In so doing, the study has deviated from the conventional urban planning and geographical approaches on informal settlements which are more

⁷¹ In Swaziland, a land board has recently been established but it is not yet fully operational and has not yet started working in urban areas.

inclined to describing and evaluating the different approaches employed by developing countries to improve settlements. Peri-urban research in general tends to be descriptive with little attempt to theorize the underlying contradictions (Mbiba and Huchezermeyer 2002). The use of the conceptual framework, namely, the emphasis on politics and drawing on an actor-oriented approach, has unveiled the multifaceted dimensions of development, thus, clearly demonstrating its adverse impact on development and residents.

The interaction between traditional and urban authorities examined in this study is a reflection of the uniqueness and complexity of Swazi urban life, which urban theory, informed by Western urban experiences does not capture. In essence, this study raises concerns about the theory of urban scholarship in developing countries' cities (Robinson 2006) and challenges earlier studies on their failures to engage with this complexity. This study goes beyond analysing and critiquing the application of conventional approaches of planning in developing countries and proposes alternative approaches. As Matthews (2004) observes, a critique of development such as that offered by post-development theory should include consideration of what should be put in its place. In keeping with this, the theoretical contribution of this study lies in the fact that the kind of contestations – over land control and authority involving various actors, over contexts and over political dynamics examined in this study – has, in most literature, been associated with rural settings (see Berry, 1989; Peluso and Lund, 2011). This study therefore addresses these limitations in earlier literature, exploring how particular issues and contests over leadership are played out in urban settings and in so doing, makes a theoretical contribution to urban development literature.

The micro focus of this study and my determination to provide in-depth empirical evidence on the issue of the interplay of land tenure systems between the traditional and urban authorities, provides a basis for future research. This future research might examine other informal settlements engulfed in tensions between the traditional authorities and the urban authorities with the view to also demonstrate their impact on residents. In the case of the cities of Manzini and Mbabane and SUDP areas, a comparative analysis of the experience of Moneni and Msunduza informal settlements, would provide comparative analysis of this phenomena, thus, contributing to the few studies conducted on urban development in Swaziland (Forster and Nsibandze 2000; Miles-Mafafo 2001; Sihlongonyane 2003; MuzVidziwa and Zamberia 2006). The interviews I conducted also drew my attention to the psychological impact of the privatisation of tenure on the residents and the SUDP in general, which warrants further research as participants in the study frequently expressed their frustrations and shed tears as they narrated their development ordeal. I was not equipped to examine the psychological effects of this development project, but these findings suggest that this is a significant component which will in the

future provide further insights into the profound effects of privatisation of land in low income communities in the absence of pro-poor alternatives. More comparative studies might seek to explore the extent to which conflict between traditional and urban authority is present in peri-urban communities in Africa and elsewhere and to what extent should they be seen as an integral component of urban development.

The study has demonstrated that the introduction of the 99-year lease in the informal settlements worsened insecurity rather than increased it, a contradiction to the planners' anticipation and a contradiction which challenges academic arguments regarding the benefits of privatisation. Privatisation of land in the rural areas has always been associated, in the eyes of development planners, with an increase of security and agricultural productivity whilst customary tenure remains largely viewed as insecure and as an impediment to development. These are not the views of Moneni's residents. Rather, this study has demonstrated that many residents of informal settlements prefer customary tenure and that, for them, the introduction of privatisation can worsen their living conditions. The empirical evidence provided here hopes to draw the attention of scholars and policy makers, increasing their awareness of the implications of socio-political processes to urban development and to the nature of contests existing in urban settings.

In conclusion the hypothesis of the study – that the interplay of the urban land tenure systems has adversely impacted on the residents of informal settlements – has been confirmed. The findings have also illustrated that the upgrading projects themselves negatively impact the residents of the informal settlements, and the failure to recognise and understand the interplay between authorities was a crucial oversight. The study concludes that the traditional and modern authorities' contestation over jurisdiction of the informal settlements has not and indeed will not be resolved, especially in the city of Manzini as both sets of authorities assert their authority and both only compromise when it suits them. The presence of respected princes in Moneni makes it a unique informal settlement, which has forced the government to bend her practice pertaining to the governance of urban areas. Yet its uniqueness makes an ideal case study for examining the tensions and complexities of urban development. In addition to the theoretical contribution of the study, a significant strength of the study is that it has demonstrated that residents are not passive actors in the development process; instead, they engage in certain focused strategies to deal with issues that affect their lives, which in general, studies on urban development do not cover.

Based on the findings of this study, I assert that the Swaziland Urban Development Project has been instrumental in revealing the deep-seated land problems in the country. This study provided an in-depth analysis of what has been sketched around for many decades by scholars (Mabogunje 1992; Forster and Nsibande 2000; Antwi 2002; Toulmin and Quan 2006; MuzVidziwa and Zamberi 2006), that is,

‘coexistence of traditional and urban authorities’. Yet, recognition of this co-existence is too simplistic and tells us nothing about the underlying dynamics of politics and power. Unpacking the socio-political dynamics, the diverse actors involved in the interaction and examining the different roles played by the authorities in informal settlements upgrading, is an important milestone not only in urban development scholarship but also in development planning and policy. It is in the sense that this dissertation has also addressed the question of what is wrong with the co-existence and helped to dismiss the assumption that traditional leaders are the only problem or the sole cause of problems in the development of informal settlements. On the contrary, the study has shown that neither the traditional nor the urban authorities are entirely to blame in this contestation of the development process. Taken into consideration, this diagnosis could better shape urban development in the future.

As indicated in Chapter Two of the thesis, this co-existence of the different tenure types dates back to the colonial times where the British Administration facilitated the Land Partition Act of 1907 and introduced the categorisation of different types of tenure. In spite of this fact, I conclude that had the government directly tackled the issue of the simultaneous existence of traditional structures and urban structures in the informal settlements in relation to the SUDP, the avalanche of challenges unveiled in this study may have been prevented. Undoubtedly, and as demonstrated by this study, the interplay of urban land tenure systems in Swaziland has negatively impacted on the residents of informal settlements.

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Appendix 1: Policy and legislative reform

Policy/legislation/study	Application	Process	Adopted
Plot Pricing Policy	UDP	MHUD working group developed a set of rules	1994
Resettlement and Compensation Policy	UDP/MHUD	MHUD working group developed rules and criteria	1994
Allocation Policy	UDP	MHUD working group developed rules and criteria	1994
Peri-Urban Growth Policy	National	Interministerial working group developed draft policy	Not yet
The Urban Governement Policy	MHUD	MHUD working group developed criteria	1995
99-year Lease	UDP	Interministerial committee developed head lease (Ngwenyama to GoS) and subsidiary lease (GoS to individuals)	1995
National Housing Policy review	National	Review of 1987 draft policy in 1993 and again in 2001	2001
National Land Policy Study	National	MHUD/MNRE consutant prepared detailed policy statement	Not yet
Physical Planning and Development Control Review	National	MHUD Study, led to Physical Planning Policy and Physical Planning & Development Control Act and National Development Code	1991 Not yet
Grade II Building Regulations	National	Reviewed and updated as part of UDP project preparation	1994
The Water Services Corpoation Act	SWSC	MNRE consulted drafted legislation to enable creation of SWSC	1992
The Rating Act	National	MHUD Working Group developed ammendments, led to new Act	1995
The Marriages Act	National	MHUD working with Gender Unit in Ministry of Home Affairs proposed ammendments to this legislation.(see Gender below)	Not yet
The Deeds Registry Act	National		Not yet
Land-related legislation study	National	Reviewed 40 reports and 80 statutes,drafted a new Land Act and ammendments to Land Survey Act &Regulations	Not yet
Inter-governmental Fiscal transfer Study	National	Set up rolling annual transfers from GoS to municipalities	2005
Study on Upgrading Peri-Urban Areas	National	Proposed system of administration and initial pilot project	Not yet

Gender and Land issues Study	UDP/MHUD	Identified and reviewd existing legislation & policies that obstruct women's full rights to land ownership. Proposed ammendments to Marriages, Deeds Registry, Estates & Succession Acts	2003
Housing Finance for Low Income Households	MHUD	Study to assess potential of cooperative finance. Findings negative	Not Yet 1996

Source:

Lowsby

and

De

Groot

2007

Appendix 2: Access to services by survey households. Formal and informal housing areas

Mbabane and Manzini/Matsapa, 1988

	Formal		Informal	
	Mbabane	Manzini	Mbabane	Manzini
Water				
○ pipe inside	77	88	2	5
○ pipe outside	18	7	7	54(1)
○ communal standpipe	4	4	46(1)	30
○ Well/springs	-	-	30	3
○ River	1	-	15	8
2. Type of toilet				
○ water toilet exclusive and shared	77	68	1	3
○ septic tank (2)	-	4	1	10
○ pit	14	28	94	82
○ none	4	-	4	5
3. Type of Bathroom				
○ separate bathroom with piped water	75	68	1	7
○ Portable tub	25	32	97	92
○ River/well	-	-	2	1
4. Fuel Use				
○ Electricity	64	65	1	7
○ Gas	9	10	16	15
○ Kerosene	17	21	38	60
○ Coal	5	-	3	5
○ Wood	5	4	42	12
5. Lighting Source				
○ electricity	77	70	1	9
○ gas	-	3	4	1
○ kerosene	5	2	11	7
○ candle	14	21	72	75
○ candle/kerosene	4	4	12	8

Notes”

(1) May be recording error

(2) People would not always know the difference between sewerred and septic tank systems.

Source: Hoek-Smit 1988

Appendix 3: Levels of service provided in Moneni and Msunduza

Service	Original Standard	Modified standard
Collector roads (designated bus and taxi routes)	5.5 m surfaced width, gravel base and sub base	6.0 m surfaced width, crushed stone base and gravel sub base
Access roads (plot access)	2.5 m or 3.0 m surfaced width	4.5 m surfaced width, concrete on steep grades
Footpaths (Minimum plot access standards)	2.0 m wide, gravel but concrete	on steep grades
Storm water drainage	Using above-ground side drains	and footpaths where possible
Water supply	Full reticulation with communal standpipe	Full reticulation with prepaid metered stand pipe as minimum
Sanitation	VIP latrine as minimum. septic tank Option for pour-flush toilet or septic tank (depending on water supply option).Sewers where on- site sanitation inappropriate	
Security lighting	Conventional pole-mounted street lights	High masts lights
Communal refuse	Hard standing for tractor drawn (closed skips)	Hard standing for truck – mounted (open) skips

Source: Lowsby and De Groot 2007

*The original infrastructure standards were used in Msunduza and the modified used in Moneni.

Appendix 4: Options to enhance affordability

Option	How	Responsibility/entitlement
Plot Swop	Exchange current plot for a smaller and more affordable plot	Compensation and assistance
Joint purchase	Residents can enter into agreement with another person and jointly purchase a plot	Pay rates and service charges jointly
Charitable institutions	Subject to community approval, charity organizations can buy plots	Plot used for charitable work to benefit community
Commercial plots sold at a premium	Proceeds obtained through sale used to off-set the plot price for non-affording residents	Resident to pay rates and service charges
Excess plots sold at commercial price	To offset the plot price for non-affording residents	Payment of rates and service charge remain with non affording residents.
Community Subsidy	A community may fundraise and provide financial assistance to destitute residents	Destitute residents selected by community
Community Trust	Affording residents with excess capital for investment purposes may purchase plots occupied by a destitute resident at full cost price and determine the conditions under which the occupant will stay on the land.	Members of the trust fund and enjoy more benefits as they decide how property will be managed, managed and sold or transferred.

Source: MHUD 1996

Appendix 5: Case of a man (Makhubu) who believes was deprived of his compensation

(Extract from interview)

Do you think you were fairly compensated for your properties affected by the project?

No, because I never received it, instead it was given to my ex wife Hlelile Ngcamphalala whom I had separated with for a period of twelve years and she stayed somewhere else.

There is still outstanding compensation for some of the trees that were not included in the assets inventory.

Why was the money given to your ex wife?

It is corruption. It was not the Chiefs Inner Council idea but a solitary decision of Mr. X.

Who did you lodge your complaints with?

A. I appealed to Mr. B. Lukhele who was a Headman of the area but had been stripped of his position of being Headman by the very Mr. X. He wrote a letter to Manzini City Council recommending that I get compensation for all the affected properties because I am the rightful custodian of the homestead. The letter though was dismissed by Mr. X hence not considered. I took the same letter to the chief but the headman declined to receive it. 'This man X was 'everything in this area', Headman (induna) and also chief's runner, wherever I tried to appeal Mr. X would be there in all gates.' (*emasangweni*)

B. I also lodged my grievance with City Council and was told that the City Council considers decisions taken by the Chief of Moneni; thus, could not do otherwise but give compensation to my wife as instructed by the Chief of Moneni in a letter submitted.

C. I also appealed to the chairperson of the Moneni Allocations Committee who is a Prince but he did not help because he is a friend to the man that has been frustrating me.

D. I appealed to the Chief himself who unfortunately sought advice from the very man X. who had ill-treated me and messed up. The man advised the chief to give it to the ex-wife.

E. I appealed to the Swazi National Court in an effort to avert payment of compensation to my ex-wife. But this was a futile exercise as Council had already paid out compensation to her.

F. I went to see the Ministry of Housing and Urban Development's Project Coordinator, to also determine whether my house would be relocated or not. That followed contradictory statement given by the chairperson of the Moneni Committee representing residents of Moneni in the allocations committee. I also wanted to ensure that compensation for the house is paid out to me and not my ex-wife.

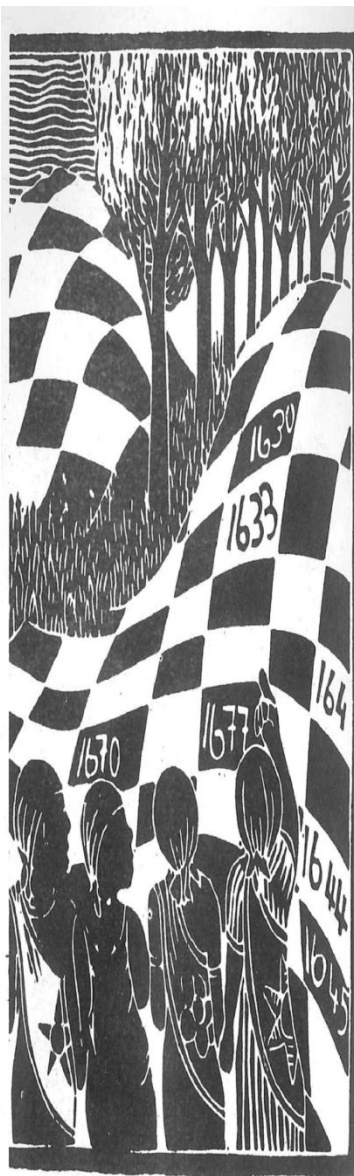
G. Ultimately I lodged my grievance with the High Court where it is still pending; I want the Government and Council to refund me all the compensation for vegetation which they unlawfully gave to my ex wife.

Appendix 6: Case of a man who believed the traditional leaders deprived him of compensation

A man who stayed in his in-laws home lodged a grievance with the Ndabazabantu⁷², complaining that the leadership had instructed his in-laws to sack him from their home where he stayed for years with his wife. He further complained that the member of the traditional leader was depriving him of his compensation. He alleged that a member of the Moneni Steering Committee had written to the in laws that compensation for his vegetation should be paid out to the in laws and not him. He argued that was violation of the Compensation and Resettlement Policy which stipulates that compensation shall be paid to the property owner, which in this case he is the owner because he planted the vegetation. Two members of the Steering committee attended the hearing and defended their stand that they only recommended that the money be handed over to the Master of High Court to distribute since the owner of the homestead passed on. The President/Ndabazabantu's judgment in this issue was in favour of the Moneni Steering committee that the complainant should await the Master of the High Court' decision;the complaint expressed his dissatisfaction with the judgement.

⁷² A person appointed by the King Advisory Council to hear cases, especially those involving customary law. He is based at the Regional Administration offices.

Appendix 7: Allocation criteria



UDP Factsheet No. 2: ALLOCATION CRITERIA AND PROCEDURES

This pamphlet describes how the allocation of plots will be done and who can apply for a plot. The Ministry of Housing and Urban Development has finalized a policy that describes how plots are to be allocated in the project areas. It is a principle of these Allocation Criteria and Procedures that they must be fair, open, easy to understand and administer. The full document is available from the Project Coordination Unit of the Ministry of Housing and Urban Development for anyone who wants to read it.

December 1994

Who will allocate the plots?

Allocation Committees will be assigned to each project area to allocate plots. Each Allocation Committee will have representatives from relevant Ministries, Agencies, and the communities. The chief responsibilities of the Allocation Committees will be to ensure that residents qualify for plot allocation based on the criteria explained later in this factsheet and, after qualification has been determined, the conditional allocation of plots. Allocation Committees will consist of representatives from the following organizations:

For sites located on Swazi Nation Land (Mhobodleni)

The Ministry of Housing and Urban Development (Chair)
The National Housing Board (Secretariat)
The City Council
The Dept. of Housing and Human Settlements of MHUD
The Libandla
The Regional Administration Office

For sites located on Crown Land (Msunduzi, Nkwalini, Mahwalala, Mneni)

The Ministry of Housing and Urban Development (Chair)
The National Housing Board (Secretariat)
The City Council
The Dept. of Housing and Human Settlements of MHUD
The Community Council of each area (two members)

What is the process for the allocation of plots?

From the recently completed census of project area residents, the Allocation Committees will determine who is eligible for allocation based on the residency requirements explained later in this factsheet.

The Allocation Committees will review and verify the census lists with representatives from each community council, and will put residents into Priority Groups for the purpose of establishing an allocation order.

The Allocation Committees will grant conditional allocations to residents based on placement in these groups. The allocations are conditional upon each resident's ability to afford the plot and the other criteria for application. Lists of all allocations will be published in the local media.

What are the Priority Groups?

PRIMARY ALLOCATION CASES:

Priority Group No. 1

Heads of Households who have been granted a previous right to that plot through Khontia or occupancy permit or permission of the libandla/community council, and can afford the plot price.

SECONDARY ALLOCATION CASES:

Priority Group No. 2

Heads of Households who have been forced to move within the same project areas because of roads, other construction work, or because the land is to be used for other purposes. These individuals will be compensated and resettled within the same project area if possible.

Priority Group No. 3

Heads of Households who are forced to change plots in the same project area because they are currently on plots with more than one household, (compensation and resettlement required);

Priority Group No. 4

Heads of Households who have a right to a plot but have not built a structure on that plot in respect of the Building Ban in the area;

Priority Group No. 5

Heads of Households who are forced to change plots because they cannot afford the plot they are now living on, but could afford a cheaper one, (compensation and resettlement required); and

Priority Group No. 6

Heads of Households who are forced to move from another project area due to lack of plots in their own areas as a result of involuntary relocation, (compensation and resettlement required).

After primary and secondary allocations are complete, the Allocation Committees will rank applicants within supplementary priority groups on the basis of affordability and the other information supplied on the application forms. Other than tenants, only those residents who have been designated by Heads of Households from

Appendix 8: Houses affected by the building ban



Appendix 9: Household Survey conducted in the informal settlement of Moneni 2009
(Questionnaire)

1. Who provides services in the area?

(i) Government (ii) City Council (iii) NGOs (iv) Other (Specify)-----

2. To whom do you report your complaints about the following and why?

Land: -----

Housing: -----

Urban services (roads, water, and electricity): -----

3. Have you ever heard any problem with the service provider?

(i) No

(ii) Yes (Explain the situation)-----

How was the problem solved?-----

Urban Development Project

4. (a) When did you get to know about the Urban Development Project?

i) before implementation ii) During implementation iii) Towards the end

iv) Still not clear about UDP

(b) How did you get to know about the UDP?

i) Through traditional leaders ii) City Council officials iii) Other community members (Clarify)

5. Was there any person who helped you in the process of getting permission to stay/build in the area?

6. i) No ii) Yes

(i) Relative(ii) Community member (specify) (iii) Other

7. If yes please explain?

8. How long did it take you to get permission to settle in the area?

(i) 0-2yrs (ii) 3-5yrs (iii) 6-10 yrs (iv) other (specify)

9. Were you fairly treated?

(i) No

(ii) Yes (Explain)-----

10. Were you expected to provide anything as a token of appreciation?

(i) Cash (state amount-optional) (ii) In –kind (iii) Nothing

Please explain-----

11. Were there any conditions you were given for settling the area?

(i) None

(ii) Yes (Explain)

12. Were you told about any responsibility played by government or City Council in the process of getting the permission to settle the area?

(i) No

(ii) Yes (Explain)-----

Authority and Service provision

13. Who do you consider the rightful authority of the area?

(i) Chief/Traditional leaders (ii) City Council (iii) Government

(iv) Regional Administrator (v) Other (Specify) -----

14. Who do you pay loyalty (allegiance) to? -----

(i) Whom do you approach to get permission to build new house/houses?
Chief/Traditional leaders (ii) City Council (iii) No one

(iii) Other(specify)

Explanation:-----

15. Who provides services in the area?

(ii) Government (ii) City Council (iii) NGOs (iv) Other (Specify)-----

16. To whom do you report your complaints about the following and why?

Land: -----

Housing: -----

Urban services (roads, water, and electricity): -----

17. Have you ever heard any problem with the service provider?

(iii) No

(iv) Yes (Explain the situation)-----

How was the problem solved?-----

Urban Development Project

18. (a) When did you get to know about the Urban Development Project?

i) before implementation ii) During implementation iii) Towards the end

iv) Still not clear about UDP

(b) How did you get to know about the UDP?

i) Through traditional leaders ii) City Council officials iii) Other community members
(Clarify)

21. If it was introduced what was your first impression about it?

22. Were you affected by the project in any way?

i) No

ii) Yes

a) Plot b) Fields (c) Vegetation (d) graves

e) Houses f) Other

23. How were you compensated for your affected items?

(i) Cash (Amount optional)

(ii) In-kind

No (Explain):-----

24. (a) What kind of enterprise does your household operate?

(b)Where do you operate the enterprise?

(i) Home, inside

(ii) Roadside

(iii) Mobile

(iv) Traditional market shop

(v) Other fixed place (specify)

25. How has the urban development project affected your enterprise?

26. Has the SUDP made your living conditions better, worse, won't be much change.

(i) Better

(ii) Worse

(iii) Not much change

(iv) Don't know

27. Do you think you would have benefited more if the project was implemented earlier than 2007?

28. In your opinion what delayed implementation of the project in your community?

29. What were the things that you liked about the UDP?

What were things you did not like about the UDP?

30 Any other comment: -----