

# ENABLING REGULATORY COHERENCE IN THE ESWATINI CONSTRUCTION INDUSTRY

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Despite contributing to economic growth, the construction industry is challenging to regulate. Ineffective regulation compromises the economic sustainability of the industry. Therefore, this phenomenological study explored the barriers and enablers of regulatory coherence in the Eswatini construction industry. Forty-five (45) participants holding various construction industry positions were selected through purposive sampling for the qualitative strand of the study. The textual data were collected through semi-structured interviews using open-ended questions and analysed thematically. The findings revealed that overregulation, discrepancies in the framework, corruption, and ineffective leadership in the CIC hindered regulatory coherence in Eswatini Construction (barriers). The results indicate that stakeholder engagement, legislative harmonisation, transparency, and accountability enable the coherence of the regulatory framework (enablers). Through the promotion of the enablers, including legislative framework review as well as research and development, stakeholders could better manage the factors that impede the effective regulation and performance of the industry.

Keywords: coherence; construction; industry; legislative framework; Eswatini

## INTRODUCTION

The construction industry (CI) is crucial to global economic development, employing around 7% of the global workforce and delivering essential structures such as residential buildings, public facilities, and private infrastructure (Salah *et al.*, 2023). Nevertheless, construction industries in developing countries, including Eswatini, often face constraints stemming from regulatory incoherence (Omollo, 2019). Therefore, this phenomenological study explored the regulatory coherence in the Eswatini construction industry (ECI). The study's objectives were to identify factors that hinder or enable regulatory coherence and ascertain how regulatory coherence could be improved in the ECI.

For effective regulation of the CI, regulatory coherence is crucial. Regulatory coherence is the alignment of regulations to ensure their compatibility, devoid of any inconsistencies or superfluous repetitions (de Waal, 2021). A regulatory framework can thus only be coherent if it is also consistent. Conversely, regulatory incoherence

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lacks a systematic or logical connection between policy and practice (de Waal, 2021). A lack of regulatory coherence hampers the development agenda in many developing countries (Abiabo and Lu, 2023). In the study context, developing countries are characterised by an underdeveloped industrial base relative to other countries (Salah *et al.*, 2023). Consequently, a developing country may lack the necessary infrastructure, technology, and skilled labour force to support a robust industrial base.

Despite the abundance of research on construction management, only a limited number of studies delve into the coherence of regulatory frameworks that govern the industry. Numerous researchers have made significant contributions to the evaluation of construction projects and the assessment of quality. For example, Salah *et al.*, (2023) introduced a framework to evaluate the sustainability of construction projects. Similarly, Govender *et al.*, (2022) formulated a framework for assessing the quality of tender documents. Notably, there is limited research on regulatory coherence, regulatory incoherence, and how regulatory coherence can be improved in the CI. This research aims to bridge the gap by exploring the issue within the specific context of Eswatini, a developing country whose regulatory framework in the CI is challenging.

The study sought to address the following research questions:

1. What factors hinder regulatory coherence in the Eswatini Construction Industry?
2. Which factors enable regulatory incoherence in the Eswatini Construction Industry?
3. How can regulatory coherence be improved in the Eswatini Construction Industry?

In Eswatini, the construction sector is crucial for GDP and employment opportunities. Eswatini's commitment to infrastructure development is evident through the allocation of 25% of the Government budget for 2023-24, totalling E5.8 billion or US\$ 306,167,152.00 and the establishment of the Construction Industry Council (The Government of Eswatini [GoE], 2023). The Construction Industry Council (CIC) aims to create a favourable environment while mitigating obstacles to industry performance by implementing the CIC Act of 2013. This Act entails the current regulatory framework governing the Eswatini construction industry (ECI). The CIC ensures that the regulatory framework functions effectively and addresses industry needs. However, there are concerns that the current regulatory framework is ineffective in governing and controlling the ECI.

The CIC comprises four industry-related associations: the Eswatini Contractors Association (ECA), Eswatini Association of Architects, Engineers, and Surveyors (EAAES), Eswatini Association of Indigenous Engineers (EAIE), and the Building Material and Suppliers Association (BMSA). Per the CIC Act of 2013, contractors are categorised into different groups: builders, consultants, suppliers, and manufacturers. In addition to project registration, the CIC is also responsible for registering contractors involved in general building, civil engineering, electrical, and mechanical tasks. The key stakeholders in this process include consultants, manufacturers, specialised suppliers, and individual artisans (Dlamini, 2012). For the ECI to thrive, these stakeholders should operate within a mutually agreed framework (CIC, 2019). However, the ECI faces various regulatory challenges, primarily clarifying the roles and responsibilities of the four construction industry associations (ECA, EAAES, EAIE, and BMSA).

As a result, specific stakeholders within the industry exhibit a notable level of non-adherence to the CIC Act, posing challenges for the CIC, particularly in ensuring project registration compliance (CIC, 2019). Despite the presence of the CIC, the problem of poor project execution remains persistent in Eswatini. Moreover, the private sector hesitates to participate in the ECI due to diminished investor trust (CBE, 2019). Research attributes such issues to the governance and management of CI (Salah *et al.*, 2023). Inherently, governance and management of the CI are at the heart of the regulatory framework. The contextual challenges provide the rationale for the study, which explored regulatory coherence in the ECI.

## LITERATURE REVIEW

Regulatory measures are crucial in addressing challenges in construction project management, particularly in developing countries such as Eswatini. Regulatory coherence is essential in managing the complex construction sector, which uses substantial resources and involves multiple stakeholders throughout the project's lifespan (Ofori *et al.*, 2016).

Therefore, it is crucial to identify and streamline regulations that target specific issues to ensure industry productivity and viability (Organisation for Economic Cooperation and Development [OECD], 2020). Abiabo and Lu (2022) stress the importance of regulating construction activities, including design, material selection, inspections, and addressing failures. Similarly, Dithebe *et al.*, (2022) assert that governments establish regulatory agencies to address the construction sector's challenges, such as contractual disputes and conflicts. However, achieving regulatory coherence in the construction industry is challenging due to several barriers discussed in the subsequent section. Barriers are factors that hinder regulatory coherence in the CI. As revealed by the literature, barriers to effective regulation of the construction industry fall into three (3) broad categories. These are a flawed framework, ineffective leadership, and corruption. A summary of the barriers to regulatory coherence in the construction industry is presented in Table 1.

A flawed regulatory framework denotes a situation where laws and regulations across regulatory bodies are contradictory or conflicting (de Waal, 2021). Flaws in the regulatory framework result in overregulation, contradictory or conflicting regulations, and stifle regulatory innovation. Overregulation means excessive application of rules and guidelines. These regulations include strict building codes, zoning restrictions, environmental impact assessments, and permit requirements (Dithebe *et al.*, 2022). Notably, a flawed regulatory framework increases the risk of contradictory or conflicting laws and standards across regulatory bodies - leading to non-compliance (Omollo, 2019). While regulations are essential for ensuring safety and quality in construction projects, an excessive amount can stifle innovation and hinder economic growth in the sector.

Ineffective leadership refers to the lack of oversight and control over the CI (Adebawal *et al.*, 2016). Ineffective leadership is a barrier to regulatory coherence as it exacerbates non-compliance with industry regulations such as safety regulations and a disregard for environmental standards (Dithebe *et al.*, 2022). Ineffective leadership also manifests in poor coordination and conflicts among various stakeholders, which constitutes barriers to regulatory cohesion (Omollo, 2019). Incoherent regulation breeds corruption through collusion between contractors and government officials, leading to the awarding of contracts based on personal connections rather than merit

(Dithebe *et al.*, 2022). Corruption is a barrier to coherent regulation, undermining industry protocols and ethics.

Table 1: Barriers to Regulatory Coherence in the Construction Industry

Barrier Category	Impact on Regulatory Coherence	Source
Flawed framework	▪ Overregulation: creates inconsistencies	Dithebe <i>et al.</i> , (2022)
	▪ Contradictory or conflicting regulations	Omollo (2019)
	▪ Creates disputes and debates: rivalry	Dlamini (2012)
	▪ Stifles regulatory innovation	Abiabo and Lu (2023)
Ineffective leadership	▪ Ineffective and inefficient management	Adebawal <i>et al.</i> , (2016)
	▪ Poor coordination of stakeholders	Abiabo and Lu (2023)
	▪ Perpetrates non-compliance	Ofori <i>et al.</i> , (2016)
	▪ Inadequate monitoring mechanisms	Dithebe <i>et al.</i> , (2022)
	▪ Lacks expertise and commitment	Odhiambo <i>et al.</i> , (2022)
Corruption	▪ Unfair competition: price fixing	Salah <i>et al.</i> , (2023)
	▪ Unethical conduct: fraud, bribery	Bowen <i>et al.</i> , (2012)
	▪ Lack of transparency and accountability	Dithebe <i>et al.</i> , (2022)

Additionally, corruption creates unfair competition through bid rigging, price fixing, or collusion, creating an uneven playing field that can harm smaller contractors and limit consumer choice (Salah *et al.*, 2023). Thus, unfair competition hinders regulatory coherence, often creating an unproductive working environment characterised by rivalry instead of collaboration (Salah *et al.*, 2023). By creating inequalities, unfair competition perpetrates unethical conduct through a lack of transparency and accountability, which hinders regulatory coherence.

A literature search reveals three (3) broad categories of enablers: a robust framework, sound leadership, transparency, and accountability. Table 2 summarises the barriers to regulatory coherence in the construction industry.

Table 2: Enablers of Regulatory Coherence in the Construction Industry

Enabler Category	Impact on Regulatory Coherence	Source
Robust framework	▪ Ensures proper CI governance	Dithebe <i>et al.</i> , (2022)
	▪ Consistent regulations and standards	Omollo (2019)
	▪ Promotes regulatory innovation	Dlamini (2012)
	▪ Efficient dispute resolution mechanisms	Ofori (2016)
Strong leadership	▪ Effective and efficient regulation	Adebawal <i>et al.</i> , (2016)
	▪ Fosters stakeholder engagement	Abiabo and Lu (2023)
	▪ Ensures compliance and monitoring	Ofori <i>et al.</i> , (2016)
	▪ Invests in human capacity development	Dithebe <i>et al.</i> , (2022)
	▪ Embraces technology and new trends	Odhiambo <i>et al.</i> , (2022)
Ethical conduct	▪ Ensures fair competition: empowerment	Salah <i>et al.</i> , (2023)
	▪ Fosters transparency and accountability	Bowen <i>et al.</i> , (2012)
	▪ Creates positive relationships: trust	Dithebe <i>et al.</i> , (2022)

Proper governance of the CI ensures smooth operations and productivity while minimising problems. A robust regulatory framework enables regulatory coherence by establishing and enforcing rules, standards, and guidelines that govern various aspects of construction activities (Omollo, 2019). These regulations are periodically updated to incorporate new technologies, materials, and construction techniques (Dlamini, 2012). This way, a robust framework promotes regulatory innovation. In

addition, a sound regulatory framework fosters industry growth by providing mechanisms for resolving disputes and addressing complaints (Ofori *et al.*, 2016).

Strong construction industry leaders possess technical expertise, strategic vision, and strong communication skills to navigate the industry's complexities effectively and empower stakeholders (Dithebe *et al.*, 2022). Human capacity development is prioritised so stakeholders can actively engage in regulatory framework devolvement and review (Abiabo and Lu, 2022). Compliance levels will likely improve when stakeholders own up to the regulatory framework. Moreover, leaders must adapt to changing market conditions, regulations, and technologies to stay competitive and drive innovation within the industry (Odhiambo *et al.*, 2022).

Transparency is also critical to building trust and credibility with its stakeholders, essential for long-term success in the CI (Dithebe *et al.*, 2022). Accountability is equally important as it ensures that all parties involved in the CI are held responsible for their actions and decisions. By establishing clear lines of accountability, the industry can prevent unethical practices such as bribery (Bowen *et al.*, 2012). Additionally, when all stakeholders have access to accurate information, they can make informed decisions and collaborate more effectively, driving the industry forward (Dithebe *et al.*, 2022).

Regulatory coherence revolves around three (3) critical factors: the framework's regulatory structure, the regulatory bodies' leadership, and ethics. The state of these aspects can either enable or hinder regulatory coherence. Addressing legislative incoherence in the CI requires a comprehensive review and analysis of existing laws and regulations to identify and resolve conflicting provisions (de Waal, 2021). This may involve harmonising laws through amendments or repealing outdated or contradictory laws (Abiabo and Lu, 2022). Legislative harmonisation requires effective coordination and communication between different legislative bodies to ensure that new laws are consistent with existing legal frameworks (Ofori *et al.*, 2016). Addressing legislative inconsistency is essential for promoting effective governance and upholding the rule of law within the CI - hence the current study.

## **METHOD**

The study used a hermeneutic phenomenological to explore regulatory coherence in the ECI. By focusing on lived experiences, the phenomenological research design was optimal for gathering stakeholders' views on factors that either hinder or enable regulatory coherence and on how regulatory coherence could be improved in the ECI. Phenomenological research was appropriate. Following research ethics, 45 participants (41 males and four females) who were crucial stakeholders and deemed knowledgeable on the phenomenon (construction industry regulation) were identified through the CIC database and selected using purposive sampling (Lichtman, 2023). Only stakeholders engaged with the ECI regulatory framework at an intermediate to expert level were selected. To create a representative sample, the participants were chosen from various backgrounds, including the regulatory branch, trade associations, regulatory agencies, the legal profession, well-known industry figures, and contractors working in the building sector.

### **Procedures for Data Collection and Analysis**

Semi-structured interviews, using open-ended questions, were used to collect data, as recommended by Leavy (2022). The participants were asked open-ended questions regarding their perspectives on what they understood as factors hindering or enabling

regulatory coherence and how regulatory coherence could be improved in the ECI. The interview guide comprised several specific questions aligned to the main research questions. According to Leavy (2022), preparing questions beforehand helps keep the interview focused. The interviews were recorded and transcribed verbatim, after which the data were analysed thematically. Thematic analysis was used to identify patterns or themes within qualitative data. The process entailed exploring, interpreting, and documenting pertinent patterns of significance across a given dataset, as Braun and Clarke (2019) advocated. The analysis involved identifying common words and phrases from the participant's responses (Braun and Clarke, 2019). Similar ideas were coded and later categorised (grouped). The categories were then scrutinised and confirmed, leading to the themes and subthemes in the subsequent sections.

## FINDINGS

Table 3 summarises the themes and subthemes derived from the thematic analysis according to the research questions (RQs). Three themes yielded nine (9) subthemes, with a majority linked to the first research question (RQ1).

Table 3: Summary of Themes and Subthemes

Themes	Subthemes
RQ1: Regulatory incapacity	<ul style="list-style-type: none"> <li>▪ Overregulation</li> <li>▪ Discrepancies in the framework</li> <li>▪ Corruption</li> <li>▪ Ineffective leadership in the CIC</li> </ul>
RQ2: Strategic management	<ul style="list-style-type: none"> <li>▪ Stakeholder engagement</li> <li>▪ Legislative harmonisation</li> <li>▪ Transparency and accountability</li> </ul>
RQ3: Capacity building	<ul style="list-style-type: none"> <li>▪ Regulatory framework review</li> <li>▪ Research and development</li> </ul>

### Findings on Barriers to Regulatory Coherence (RQ1)

The findings for RQ1 revealed four barriers to regulatory coherence: overregulation, discrepancies in the framework, corruption, and ineffective leadership in the CIC. Of the 45 participants, 17 (including P13, P21, P33, P37, and P43) alluded to overregulation. In their responses, the participants invariably mentioned ‘too many authorities’ and ‘processes’ and ‘excessive controls’. Thirteen participants (including P04, P12, P26, 35, and P41) mentioned discrepancies in the regulatory framework due to multiple laws and institutions. Common phrases used to express this sentiment were ‘contradictory laws’ or ‘conflicting requirements’ in the construction industry in their responses. Regarding corruption, nine participants (including P08, P17, P24, P31, and P38) were critical of the tendering system, stating that it was not transparent and encouraged malpractice - as certain companies were awarded more tenders while others had no work. Notably, the participants used the phrases ‘bribery’, ‘kickbacks,’ and ‘manipulation’ in their responses. Concerning ineffective leadership in the CIC, six participants (P03, P11, P19, P28, P32, and P45) expressed doubts about the capacity of the CIC. This was evident in the participants’ direct responses, which invariably used phrases such as ‘incompetence’, ‘inefficient’, and ‘weak.’ The

findings indicate that the participants were critical of the regulatory framework, highlighting barriers to optimal regulation and industry performance.

### **Enablers of the Regulatory Coherence (RQ2)**

The findings for RQ2 revealed three enablers for regulatory coherence: stakeholder engagement, legislative harmonisation, transparency, and accountability. Of the 45 participants, 21 (including P10, P18, P23, P36, and P40) invariably mentioned stakeholder engagement in their responses. The common phrases were ‘collaboration’, ‘communication’, and ‘consultation.’ Fourteen participants (including P07, P25, P34, P38, and P42) cited legislative harmonisation as enablers. This was evident in the participants’ direct responses, which invariably used phrases such as ‘alignment’, ‘synchronisation’, and ‘alignment.’ Ten participants (including P01, P09, P22, P27, and P39) emphasized transparency and accountability. Common phrases used by the participants on this aspect included ‘integrity’, ‘honesty’, and ‘clear.’ These are related particularly to tendering systems, licence awarding, and similar processes. The findings underscore the participants’ awareness of critical factors for regulatory coherence in the CI.

### **Findings on Improving Regulatory Coherence (RQ3)**

The findings for RQ3 revealed two strategies to improve regulatory coherence: legislative framework review and human capacity. Of the 45 participants, 29 (including P05, P11, P20, P37 and P44) invariably mentioned regulatory framework review in their responses. The participants suggested that the regulatory authority should review the current regulatory framework. Some common phrases used to express this idea include ‘revise’ ‘amend’ and ‘update.’ Sixteen participants (including P15, P16, P29, P31, and P36) suggested capacity building as another mitigating strategy. This was evident in the participants’ direct responses, which invariably used phrases such as ‘empower’, ‘training’, and ‘research’ regarding skills upgrades for industry stakeholders. Capacity building through continuous learning was cited as crucial in keeping abreast of the latest trends. The findings underscore the need to revise the regulatory framework periodically to ensure it aligns with industry trends.

On barriers (RQ1), the study found that overregulation, discrepancies in the framework, corruption, and ineffective leadership in the CIC hindered the establishment of a coherent regulatory framework in the ECI (see Table 3). The findings on overregulation corroborate those of Abiabo and Lu (2023), who cite overlapping gatekeeper responsibilities among different stakeholders in the industry. Overregulation hinders regulatory coherence by introducing inconsistencies and contradictory or conflicting regulations, as postulated by Omollo (2019). The findings mean that regulations and processes should not be complicated to achieve regulatory coherence. Even if the regulatory framework or structure involves different regulatory bodies, the regulations should be consistent, and the processes should be streamlined to ensure effective governance and control of the CI.

Arguably, overregulation breeds corruption - as noted in the current study. This study linked fraud and bribery to the tendering system, supporting previous studies such as Bowen *et al.*, (2012). The findings suggest that when the regulatory framework is complicated and incoherent, it prompts individuals to seek alternative ways to get around it. The findings on ineffective leadership support those of Adebawal *et al.*, (2016), who found that the CI suffers from ineffective and inefficient management

practices. Again, leadership and management challenges are a by-product of regulatory incoherence. The findings indicate that a complex regulatory framework is bound to pose management challenges as it undermines efforts to enforce regulations effectively and to monitor industry standards.

Regarding RQ2, the findings indicate that stakeholder engagement, legislative harmonisation, transparency, and accountability promote regulatory coherence. The findings on stakeholder engagement corroborate the ideas of Abiabo and Lu (2023) that when stakeholders own up to the regulatory framework, compliance levels are likely to improve. The findings suggest that by involving all stakeholders in the process, a bottom-up strategy (also known as a grassroots approach) can lead to more innovative solutions, increased buy-in from team members, and a stronger sense of ownership and commitment to the outcome.

Such collaborations enable regulatory coherence in the CI, as the stakeholders—directly affected by the regulations—can voice their concerns about inconsistencies and contradictions in the regulations while the framework is being developed. This can help regulatory authorities make amendments to regulations and achieve legislative harmonisation. The findings align with Omollo (2019), who postulates that a robust framework ensures proper CI governance through consistent regulations and standards. The findings on transparency and accountability support Bowen *et al.*, (2012), who state that by being transparent, the industry can build trust and credibility with its stakeholders, which is essential for long-term success. The implication is that once trust and confidence are established between stakeholders and the regulating authority, engagements regarding regular framework reviews can be conducted in good faith and meaningfully - resulting in a robust framework and a thriving CI.

The findings on improving regulatory coherence (RQ3) suggest that regulatory framework review and research and development are viable strategies to improve regulatory coherence in the ECI. The findings on the regulatory framework review relate to Dithebe *et al.*, (2022), who posit that strong leadership in the CI embraces technology and new trends. Notably, a firm grasp of technology and the latest trends necessitates research and development. The implication is that research and development can improve regulatory coherence through innovation, ensuring that regulations are based on sound principles and align with current industry trends. Investing in human capacity development is imperative for the CIC to benefit from the proposed regulatory coherence improvement measures. Nevertheless, as discussed in the next section, the current study's findings need to be considered in context, which might have posed some limitations.

The study primarily depended on the opinions of the people in charge of creating and implementing the regulations in the sector. As such, the study cannot preclude participant biases. Also, using a qualitative research approach, the study could not test causal relationships between variables.

## CONCLUSIONS

The study concludes that barriers and enablers to regulatory coherence in the CI are based on three pillars: the regulatory framework, the regulatory authority leadership, and ethics. Each pillar can either enable or hinder regulatory coherence, depending on how it impacts regulations and processes. Admittedly, the pillars impact the ECI negatively, resulting in regulatory incoherence. Nonetheless, there are viable corrective measures, as reported earlier.

Overall, this study benefits policymakers by highlighting the issues that render regulatory frameworks incoherent and emphasising the need to avoid such pitfalls. While other studies in different contexts were focused on developing regulatory frameworks, this study focused on enabling coherence in regulatory frameworks - an elusive feature. The current research has made a unique contribution by streamlining the features of coherent and incoherent construction regulatory frameworks and unearthing measures to enable coherence - pinning regulatory coherence to three fundamental pillars. This study has established standards for assessing regulatory framework coherence in the CI, thus offering valuable insights. Crucially, other developing countries in a comparable phase of construction industry advancement can utilise this study as a reference to revise and enhance their regulatory frameworks.

The study recommends that future studies using quantitative methods test the causal relationships between the variables to determine their level of impact, which was beyond the scope of the current study. Other studies could focus on specific areas of the CI, such as roads or buildings, rather than adopting a general approach. Thus, the study provides a basis for further research.

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