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THE CONTINUUM OF LAND RIGHTS APPROACH TO TENURE SECURITY: CONSOLIDATING ADVANCES IN THEORY AND PRACTICE

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Abstract

Against a background of accelerated urbanisation and the growth of informal settlements and slums, the inability of many land administration systems to cope with the challenge of land informality, and the failure of mass titling programmes to make significant impact on this challenge, a “continuum of land rights” approach to the task of achieving tenure security for all is increasingly being applied by Global Land Tool Network (GLTN) partners and other key land actors around the world. The paper describes and analyses the continuum of land rights approach, reports on the results of five complementary research and tool development processes undertaken by GLTN over the past four years, and reflects on the implications of these for the next phase of intensive, in-country application of the approach.

Key Words: Continuum of land rights; land administration; land tools; pro-poor; tenure security

1. Introduction

Tenure is frequently understood in binary terms: formal/informal, legal/extra-legal, secure/insecure, *de facto/de jure*. In practice however, a diversity of tenure arrangements exists between these extremities. The continuum of land rights is a concept for understanding this rich diversity. It also offers an alternative approach to the dominant focus on registering title of individually held private property. The continuum approach advocates that a number of tenure forms are robust, effective and legitimate. It promotes tenure security across the diverse types and advocates for their recognition in land administration, and other, systems. The continuum approach envisages that migration between tenure types is possible, dependent upon and appropriate to the contexts of time, place, history, culture, regulatory and institutional frameworks, etc.

The past four decades have been marked by accelerated urbanisation, unprecedented growth of informal settlements and slums, the inability of many land administration systems to cope with the challenge of growing land tenure insecurity, and the failure of mass titling programmes to make significant impact on this challenge. Levels of insecurity of tenure have reached critical proportions, with many negative consequences. Tenure insecurity contributes to land, housing and livelihood inequalities; social and economic exclusion and the violation of human rights; food insecurity; non-provision of essential facilities and services; physical insecurity and conflict; forced eviction, corruption and ‘land grabbing’; wide-spread discrimination against women; and the absence of livelihood and development options for youth. At a rough estimate, around 70% of developing country populations fall outside any formal land administration system. In Sub-Saharan Africa the majority of urban dwellers live in informality and poverty. In many contexts conventional land administration is too expensive and/or complex to implement; and where systems are in place they are often not working. Progress has been made in some land rights registration and urban regularisation programmes, but in most cases there have been enormous challenges of suitability, affordability, sustainability and scaling up.

The importance of securing tenure rights for all was recognised in 1991 by the UN Committee on Economic, Social and Cultural Rights, in their General Comment no. 4 on the Right to Adequate Housing (Art. 11 (1) of the Covenant on Economic, Social and Cultural Rights). The Committee resolved that:

Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction,

harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups. (UNCESCR 1991, para.8a)

In 1996, in the Istanbul Declaration on Human Settlements, participants in the United Nations Conference on Human Settlements (Habitat II) declared:

We reaffirm our commitment to the full and progressive realization of the right to adequate housing as provided for in international instruments. To that end, we shall seek the active participation of our public, private and non-governmental partners at all levels to ensure legal security of tenure, protection from discrimination and equal access to affordable, adequate housing for all persons and their families. (United Nations 1996, p.8, The Istanbul Declaration on Human Settlements para.8)

The Habitat Agenda (also a product of Habitat II) stated that:

Access to land and legal security of tenure are strategic prerequisites for the provision of adequate shelter for all and for the development of sustainable human settlements affecting both urban and rural areas. It is also one way of breaking the vicious circle of poverty. Every Government must show a commitment to promoting the provision of an adequate supply of land in the context of sustainable land-use policies. While recognizing the existence of different national laws and/or systems of land tenure, Governments at the appropriate levels, including local authorities, should nevertheless strive to remove all possible obstacles that may hamper equitable access to land and ensure that equal rights of women and men related to land and property are protected under the law. The failure to adopt, at all levels, appropriate rural and urban land policies and land management practices remains a primary cause of inequity and poverty. It is also the cause of increased living costs, the occupation of hazard-prone land, environmental degradation and the increased vulnerability of urban and rural habitats, affecting all people, especially disadvantaged and vulnerable groups, people living in poverty and low-income people. (United Nations 1996, p.40, The Habitat Agenda para.75)

Twenty years on, with Habitat III taking place later this year, the goal of achieving tenure security for all remains as critical and daunting a task as ever. Yet some significant progress has been made since the 1990s, on at least four levels:

- (1) Positive shifts in perception, concepts and ideas, towards a more flexible, inclusive approach to land tenure;
- (2) Development of innovative tools, frameworks and systems for operationalizing that approach;

- (3) Practical implementation of those shifts and innovations through multiple partnerships involving the affected settlements and communities, governments, UN agencies, professional bodies, non-governmental organisations, research institutions, and many others.
- (4) Ongoing efforts by affected individuals, families and communities, in many cases successful, to resist displacement and evictions and to find remedies for their precarious tenure situations.

This paper describes and analyses the continuum of land rights approach to achieving land tenure security. It commences with a description of the origins and development of the continuum of land rights, a concept which emerged from the need to shift beyond the fixation on titling of individually held private property as the ultimate solution to land tenure insecurity, to a more flexible, inclusive approach based on recognition of a diversity of rights, within a context of pro-poor and gender responsive land management and administration.

The paper then reports on five interrelated theoretical and practical research and tool development assignments, initiated from 2012 by GLTN, to establish a foundation for intensive, in-country application of the continuum of land rights approach. These are:

- (1) A review of the continuum concept and on that basis research into the continuum of land rights in practice in a five Southern African countries;
- (2) A survey to establish the nature and extent of the application of the continuum of land rights in the work of key land actors world-wide, working as part of the Global Land Tool Network;
- (3) An investigation of the theoretical underpinnings of the continuum concept, in order to help answer a number of questions and challenges that had emerged during the early development of the concept, including: what exactly it is, how it can be applied, and perceptions and challenges around its graphical representation;
- (4) Development of a strategic framework for the in-country operationalisation of the continuum approach, in response to questions such as: What are the key steps to be taken? What systems need to be put in place? What tools can and should be used in the process?
- (5) Development of an evaluation framework for the continuum of land rights, to clarify how different tenure types on a continuum should be evaluated in terms of social and economic costs and benefits.

After describing these five projects and presenting the key findings of each, the paper discusses the findings and conclusions of the studies. It concludes with the implications of the findings for the next phase of intensive, in-country application of the continuum of land rights approach to achieving security of tenure for all.

2. Origins and Development of the Continuum of Land Rights Concept

The continuum of land rights concept emerged around 1999. Its development can be described in four phases: (1) early development; (2) emergence of the continuum; (3) the consolidation and adoption of the continuum; and (4) maturity and challenges (see Table 1), all leading up to the present stage of intensified country level application.

Table 1: Development of the continuum of land rights concept

The initial formulation of the concept was informed by a critique of the limitations of the dominant land administration approach and systems, especially their applicability to the African context. It was deemed practically impossible, within even a medium term framework, to extend land titles on fully surveyed parcels to all people who had historically been denied access to ownership (Fourie, 1994). Fourie (1998) points out that there was no documentary evidence of title for up to 90% of parcels in developing countries, and that less than 1% of sub-Saharan Africa was covered by any kind of cadastral surveying.

Fourie's (1999) paper on "Best Practices on Access to Land and Security of Tenure", which was published in edited form by UN-Habitat (2003), marks the emergence of the continuum. From about 2005 the concept was consolidated and used to advocate for change via partners and bodies such as the African Ministerial Conference on Housing and Urban Development (AMCHUD) and others. In 2006 GLTN was formally established,¹ providing an institutional framework for work around the continuum. The development of 18 land tools for tenure security for all began in this period, while the continuum concept gained currency globally. The concept was, for example, endorsed on 15 April 2011 by the Governing Council of UN-Habitat in Resolution 23/17(7), which encourages Governments and Habitat Agenda partners to "implement land policy development and regulatory and procedural reform programmes"; and in particular "To promote security of tenure for all segments of society by recognizing and respecting a plurality of tenure systems, identifying and adopting, as appropriate to particular situations, intermediate forms of tenure arrangements, adopting alternative forms of land administration and land records alongside conventional land administration systems" (United Nations, 2011).

During this process the language used by key land actors about tenure security increasingly came to reflect a more open, inclusive approach, signaling a shift away from a preoccupation with titling and

¹ The Global Land Tool Network (GLTN) is a growing coalition of (presently) 70 international partners concerned with rural and urban land issues, striving to contribute to poverty reduction and sustainable development. GLTN advocates a paradigm shift on land away from seeing land as a purely technical matter, towards pro-poor, gender-responsive, accountable and sustainable land management and which provides for a continuum of legitimate, inclusive land tenure forms aimed at achieving tenure security and property rights for all. To this end GLTN partners develop pro-poor, gender responsive land tools that can be applied at scale. For more information see www.glttn.net.

individually held private property, to terminology accommodative of a greater variety of co-existing tenure forms. Examples of this include:

- “Access to land resources through a variety of tenure systems”, “Equitable access to land and security of all bundles of land rights” (Land Policy Initiative: AUC-ECA-AfDB 2010 p. 14; and UNECA website, n.d.)
- “Recognizing and respecting a plurality of tenure systems” (Governing Council of UN-Habitat, 2011)
- “Security of tenure of people in many areas [relying] on forms of tenure different from individual freehold”, “Social tenures” (International Federation of Surveyors: FIG 2011)
- “Range of tenure rights”, “Range of tenure rights and right holders”, “Governance of all forms of tenure (Food and Agriculture Organisation: FAO 2012, pp.1,2,13)
- “A wide range of access and usage rights”, “Secure tenure rights along with fair access to land” (Deutsche Gesellschaft für Internationale Zusammenarbeit: GIZ 2012);
- “Diversity of tenure forms and rights” (United Nations Human Rights Council 2012, pp. 19)

The publication in 2012 of GLTN’s book “Handling Land” (UN-Habitat and GLTN, 2012) marked the arrival of the fourth phase of maturity and challenges, in which the concept was being more generally adopted and applied, yet at the same time also vigorously debated. Figure 1 places the main events in the development of the continuum on a time-line.

Figure 1: Main events in the development of the continuum of land rights concept

Debates about the continuum concept

Figure 2 is a 2008 continuum diagram (UN-Habitat 2008, p.8) which has been widely used and was also reproduced in slightly revised form in “Handling Land” (p.12)

Figure 2: Continuum of Land Rights Diagram

Through research, development and application of the continuum in particular contexts, a number of practical implications had become apparent. “Handling Land” accordingly draws attention to the “highly simplified” nature of this continuum diagram, pointing out that in practice things are much more multi-layered and complex:

In reality, the rights do not lie on a single line, and they may overlap with one another. Tenure can take a variety of forms, and ‘registered freehold’ (at the formal end of the continuum) should not be seen as the preferred or ultimate form of land rights, but as one of a number of appropriate and legitimate forms. [...] The most appropriate form depends on the particular situation:

customary rights, for example, may be superior to registered freehold in certain situations. (UN-Habitat and GLTN, 2012, p12)

In spite of such considered, unambiguous narrative descriptions, the contemporary period has seen the emergence of vigorous debate and critique, related in part to interpretations of the diagram.

This was reflected, for example, in the 2012 report of the Special Rapporteur on adequate housing, drafted in the course of intensive expert and public consultation and debate. Her report commended the recognition of the diversity and multidimensional nature of existing tenure forms and practices through the continuum model. However, she noted problems with the linear diagram used to explain the concept, which “appears to suggest that registered individual freehold is an ideal type or ultimate goal, despite the fact that many other categories in other tenure systems offer equally high levels of security and legality”. She also argued that “by addressing the issue in terms of informal and formal rights, the continuum diagram is reflective of a binary thinking that has permeated international development policy.” She asserts that “forms of tenure should more accurately be placed in a multidimensional relationship to one another. And if there is a continuum, it should be seen as going from insecurity to security of tenure, not from informality to formality” (UN Human Rights Council, 2012, pp.9-10). Numerous other actors in the land sector, including GLTN partners, voiced similar concerns about the continuum diagram, with some developing alternative diagrammatic representations in attempts to eliminate confusion and clarify its meaning.

The recent debates of the continuum were also the result of other important, unresolved issues, summarised in the following set of questions. Although not strictly prioritized, the debate about individual freehold ownership emerges from our research as the most significant. The debate about purpose is implicit in much of the discussion about what continuum is and is not (intended to do).

- Does the continuum promote individual freehold ownership as the most secure form of tenure and as the ideal end state?
- What is the notion of progression which the continuum represents?
- Does the continuum confuse different tenure concepts? Rights, forms of tenure, security of tenure, recordation/registration system and regimes or systems of property?
- Is the formal/informal dimension the most appropriate? Or, is a security/insecurity dimension preferable? And, is a multi-dimensional approach more appropriate than the one dimensional formal/informal approach?
- Is the continuum applicable in only some legal contexts and not in others?
- What is the continuum concept intending to achieve?

The continuum works as a concept to understand tenure but it also has a practical, applied dimension. Implementation of the continuum of land rights relies on the development of complementary land

tools to help fill gaps in, or reforms to, land administration systems. Such tools need to be appropriate to context, flexible, able used at scale, pro-poor and gender responsive. Land tools of particular relevance to the continuum approach that have been developed, and are being used, at country level include the Gender Evaluation Criteria (for identifying and addressing gender inequities), the Social Tenure Domain Model (to accommodate and record a range of different land tenure rights), Participatory Enumeration methodologies (for generating land tenure information through transparent, inclusive and participatory processes), Participatory and Inclusive Land Readjustment, Fit-for-Purpose Land Administration (innovative and pragmatic land administration solutions), and others. (UN-Habitat, Huairou Commission et al, 2009, UN-Habitat and GLTN 2010, 2012 & 2014, FAO 2012, FIG 2014). These are in the process of being applied through capacity development and in-country implementation programmes.

3. Advances in Understanding and Practice

3.1 Research into the Continuum of Land Rights in Practice

In the course of 2012-2014 research was conducted on the theme of “Increasing urban tenure security: Investigating the continuum of land rights in practice in selected sites in Southern Africa”. The research has been described in Royston and Du Plessis (2014) “A Continuum of Land Rights: Evidence from Southern Africa”. A more detailed Synthesis Report is forthcoming.

The purpose of the study was to investigate the continuum in practice in selected sites in Southern African urban and peri-urban contexts. Angola, Malawi, Mozambique, Namibia and South Africa were selected as case studies based on a set of criteria which included existing institutional linkages, opportunities for collaboration, evidence of innovation and of the *de facto* aspects of the continuum in practice (such as “flexible land tenure” in Namibia, piloting administrative tenure recognition in Huambo, Angola and the DUAT rights in Mozambique), and the extent of tenure insecurity in relation to urbanisation and growth of informal settlements. A legal review researched the *de jure* aspects of the continuum, in all five country cases. This review was supplemented with more detailed research in Namibia, following additional field work. A literature review was undertaken for the five countries, after which more detailed research was undertaken in two, namely Malawi and Mozambique.

Debates about reforming land tenure and land administration in Africa have tended to be associated with rural land tenure, given the high proportion of Africans living in rural areas, or who regard rural areas as their primary homes. One of the key findings is that studies of land tenure have not kept up with the evidence of high urbanisation rates in Africa, and urban tenure issues have tended to be lumped into the ‘informal settlement’ or ‘slum’ problematic, with an unfortunate tendency to see this as a ‘problem’ of ‘slum eradication’. In addition, land tenure research in Southern Africa, with the

exception of South Africa and Zimbabwe, has received less scholarly attention than other regions in Africa, such as West and East Africa. Another observation is that the scope of available literature is very uneven. On the one hand, there is an impressive literature of a generalist nature, and on the other hand there are detailed studies of particular settlements, but very little literature that situates the settlement-level studies in the context of country-level policies for the purposes of capturing the range of tenures in any given country, particularly urban tenure trends.

This variety represents richness in the subject matter, but this was a challenge to integrate in the literature review on the continuum. In the end a selective approach was adopted and three general sources were particularly useful; scholarly publications where available, Urban LandMark's 'operation of the market' studies and Land Governance Assessment Framework Reports (LGAF) reports (Jere 2012; Urban LandMark 2012, 2013a-c). Literature review findings were supplemented with key person interviews in the detailed cases studies.

Main findings

The continuum concept should be robust enough to accommodate significant diversity between countries. Even within the southern African context, countries vary according to their historical political systems and the post-colonial trajectories that have been followed, including the experience of civil conflict, progress with land law and policy making since democratisation, and legal context. For this reason, country specific renditions of the continuum are required. A single diagram cannot possibly communicate rich and varied tenure arrangements. Even with the commonality of customary law in southern Africa, the manner in which it has been adapted means that a unitary conceptualisation of custom is impossible. On the other hand, a need exists to overcome the complexity of tenure diversity, and communicate to decision makers in a simplified and more abstract way. The continuum offers this hope, yet current debates indicate significant weaknesses and shortcomings, especially with the diagram. Rather than amending the diagram, the study recommended that it would make more sense for GLTN and partners to focus on clarifying the messages behind the diagram; in other words, to focus on the continuum as a concept rather than the continuum as a diagram.

Research into the range, or diversity, of land rights in the five case study countries identified the existence of specific categories of tenure such as a witnessed right to land, a locally documented right to land, a familial or marital right to land, etc. By naming, acknowledging and describing such local arrangements as rights, much can be done to 'lift' them out of local complexity and advocate for their increased recognition. However, more fundamental changes are needed for them to have more equal status along a continuum, as opposed to simply a range, of rights.

The concepts of a “range” and a “continuum” of land rights are not always clearly distinguished. While distinct to some, others use the two concepts interchangeably or confuse them with each other. The study found that a range of land rights refers to the diversity of tenure arrangements in practice, encompassing both *de facto* and *de jure* rights. While the rights in this range do not all enjoy the benefits of administrative or legal recognition, social recognition might be high, lending the *de facto* rights a local legitimacy.

A continuum of land rights, on the other hand, can be said to exist when the whole spectrum of formal, informal and customary rights are catered for within a land information management system (Fourie, 1998: 12; Lemmen et al, 2015)); and when a range of rights in a country constitutes legally enforceable claims which can be asserted and defended in a forum such as a court (Fourie 1999). “A range is not integrated into the legal system of land administration. The system is not set up that way” (Augustinus interview, June 2013). In other words, the concept of “range” does not adequately convey the linkages between different rights, underpinned by a land administration, and other, systems. The diversity of rights is important, but the legal and institutional systems that link up the different rights and, crucially, make change or mobility, as well as more effective administration, support and protection possible, are what constitute a continuum of those rights. The continuum of land rights concept therefore goes an important step further than the concept of a range of rights.

This project also unpacked the terms and concepts that might be giving rise to confusion about the continuum diagram, including tenure systems or regimes and tenure forms or categories. Tenure systems include customary, informal / social, private and public categories and these different systems can, and do, overlap and co-exist in the country cases, which increases the complexity of communicating a simply continuum message. For example ‘customary’ cannot always be distinguished from urban ‘informal’. ‘Private’ tenure relations also characterise aspects of ‘informal’ land access, such as registration/recordal and transactions. Further, customary arrangements exist on land that vested in the state. It is important to distinguish between land regimes or systems and the tenure forms or categories that exist within them.

Each of the five study countries reflects a degree of legal pluralism due to the influence of customary law, its adaptation and in some cases its integration with the civil or common law. By demonstrating the diversity of tenure arrangements in the case study countries, across the informal, formal and customary contexts, the research offers proposals for classifying the range of *de facto* rights as locally witnessed, locally documented, and administratively recognized. These categorizations can help untangle tenure complexity; a complexity which often bedevils efforts to describe, communicate and analyse. They can also assist in increasing their recognition, thereby improving tenure security, and in advocating for their inclusion in the official land administration systems. By naming these categories of land rights, it will also be possible to move away from the current ‘perceived tenure security’

option, currently identified on the diagram in *Handling Land* (UN-Habitat and GLTN, 2012) towards a more nuanced insight into the diversity of local tenure arrangements in informal and customary settings.

Various diagrams (shown in figures 3a-f below) were developed during this research process, to demonstrate that a one-size-fits-all diagram cannot capture country or locality specificity.

Figures 3a-f: Country-specific continuum diagrams, examples from Southern Africa

These diagrams are the end-point of a research process, once country and even city level complexity have been unpacked and then repackaged to categorise and characterize. In-depth local knowledge and conceptual clarity are pre-requisites for the production of country specific renditions of the continuum diagram. Analytical tools are required to assist.

There is evidence of a range of *de jure* and *de facto* rights in the case study countries, but considerable variety exists in the extent to which a continuum of rights is evident. The main conclusions are that a continuum of rights can be said to exist in Namibia and Mozambique. In the case of Namibia however, the lack of implementation (at the time of conclusion of the study) of the Flexible Land Tenure Act, means that the impact of this legal innovation is yet to be experienced at scale. The case of Mozambique is different because there is one *de jure* right that exists, the DUAT, and it does not need to be registered.

In South Africa and Malawi the findings, although different, share a “fixation” on individualised, registered rights of ‘freehold’ (in South Africa) and leasehold (in Malawi). These two countries demonstrate the most need for an advocacy strategy on the continuum. Whereas in Angola, the need is to explore ways to legally recognise the administrative procedures piloted in Huambo. An innovative example in South Africa of legal declaration using town planning / special zones is also important.

As diverse as the case study countries are, they demonstrate what can be done regarding the continuum in practice: the Flexible Land Tenure Act in Namibia, the DUAT right in Mozambique and the protections, and indeed changes to common law, that come from claiming socio-economic rights in South Africa. In Angola, the administrative protections in Huambo have made strides in the direction of improved tenure security, yet will benefit from the legal protections that a continuum represents.

GLTN and partners need to further clarify what kind of device the continuum is intended to be, in order to fine-tune the continuum concept message. The continuum is a very useful descriptive device as it makes visible the range of land rights. It breaks down the binary between ‘formal’ and ‘informal’ by opening up the diverse tenure arrangements that exist in both practice and in law. It creates

awareness about what is on the ground, instead of over-emphasising an idealised legal state, to the detriment of the social and administrative nature of tenure, aspects that are frequently ignored but which can carry the weight of local legitimacy. This project highlights the nature of that range in five case study countries by naming and identifying the forms of tenure that are often ignored as ‘informal’ or collapsed into a category of ‘perceived tenure’. Thus ‘locally witnessed rights’, ‘locally documented rights’, ‘familial rights’ and ‘administratively recognised rights’ can take their place on a continuum of land rights. The descriptive aspect of the continuum offers civil society and activist groups a tool with which to lobby for more recognition of the claims they already have, and of the land practices that they already manage.

The continuum is also an aspirational device because it shows the way to more recognition of the diversity of tenure arrangements in practice, which include, but are not limited to, legal forms. Increased recognition of an official nature, whether legal or administrative, can offer more of the protections and support that secure tenure is meant to provide, but which are generally only reserved for the freehold ownership.

3.2 Progress in Application of the Continuum of Land Rights by GLTN Partners

Building on the continuum in practice research, a survey was conducted amongst all GLTN partner organisations to assess the nature and extent of the role of the continuum in their land work across the globe.² This was deemed necessary both to inform the ongoing tool development process, as well as the intensified operationalization of the continuum approach at country level, a priority activity during Phase 2 of GLTN’s operations (2012-2017). The survey questions covered: knowledge level of the continuum of land rights approach; relevance of the approach to the work of the organisation; application of the continuum approach (with examples); challenges encountered during implementation; key considerations for successful implementation; opportunities arising from implementation; and capacity development needs for the incorporation of the approach into the work of their organisation (see “GLTN Continuum of Land Rights Survey Questionnaire”).

The survey was launched online, with subsequent partner organisations follow-up in an effort to obtain maximum response levels. 46% (32) of the total number of GLTN partner organisations (69 at the time of survey) completed the survey (see “List of Survey Respondents”). Close to half of the respondents said they have expert knowledge of the continuum concept, and a similar percentage indicated they were fairly knowledgeable on the subject. Only two partners said they were only slightly knowledgeable. 77% of the survey respondents found the continuum of land rights highly relevant to the work of their partner organisation, 12% found it relevant while 9% found it fairly

² The contributions of Jamal Browne and Esther ObaiKol in the design, management and analysis of this survey are gratefully acknowledged.

relevant. Only 2% did not find it relevant to their organisation's work. More than 80% of respondents had applied the continuum in their organisation's work.

Main findings

The survey showed that the continuum of land rights has been applied at varying scales and contexts, including policy and legal reform; changes in land administration practice; advocacy; teaching, training and research; capacity development for land practitioners; and participation and community action.

Policy and legal reform

Various partners have used the continuum of land rights to promote policy and legal reform, for example in Cambodia (recommendations to a national land policy white paper); in Egypt (in relation to land regularisation in the Nile valley, and the formulation of the national urban policy); and in the development of broader policy approaches for optimal land rights arrangements in various contexts and settings, in particular in GLTN focus countries. In the words of one partner:

We have applied the continuum in situations in which we have worked with government and other partners in making recommendations about the optimal type of land property rights to be defined for a specific setting. We always approach it in terms of defining where on a spectrum or continuum might be the optimal alternatives. This is part of the DNA [of our organisation].

Changes in land administration practice

Partners reported that some land administration systems had to some extent already begun to accommodate a continuum approach, either nationally or in specific localities. Examples referred to Namibia, Mozambique, Nicaragua, Egypt, Mexico, Botswana and Zambia. In addition to these examples, partners also reported application in international and global processes. The examples provided demonstrate how the continuum concept can enable the observation and analysis of the ways in which different tenure types evolve, transform or convert from one form to another. In addition, it can capture the diversity of tenures that can co-exist at any one point in time in a particular locality, given household, community and even country level dynamics. In many of these contexts, individual ownership, or near-ownership was the only (or primary) tenure type formally recognized and administered by the State, while the reality within a given locality and country context revealed that different *de facto* tenure forms existed and needed to be recognized and/or supported by the land administration systems.

Advocacy

Numerous respondents confirmed the value of the continuum of land rights in advocacy to guide different government authorities and development agencies in the development of policy, law and intervention strategies to promote tenure security for all. These might occur at the national, regional, municipal, peri-urban, settlement, and customary authority levels. One partner reported using the continuum concept to help analyse the power dynamics on land access and control and many other issues affecting women under different tenure arrangements. Another had used the continuum in undertaking advocacy on women's land and property rights and demonstrated that women have a right of access to, and control over land, also in instances where they did not have a formal title; and when filing cases on division of matrimonial property.

The continuum has also been applied in situations of forced evictions where communities use various means to claim and advocate for their rights to land. This has been particularly useful in research, education and training projects, advocacy and advisory services on resettlement and compensation for communities; and also in instances of threatened land grabbing. It has also been used as an advocacy tool against slum eviction on account of illegal occupancy, and to propose alternative solutions for example incremental settlement upgrading to avoid gentrification. A partner submitted that:

The concept is very essential in situations of forced evictions where communities have to use various means to claim the right to the land. The continuum therefore, plays an important role in research, education/training and projects, advocacy, advisory with regards to resettlement and compensation etc.

Understanding all the ways by which people have a right to land, is invaluable in itself, and the publications and underlying research is greatly enriching in continuing to stimulate a paradigm shift that moves away from Western dominated narrow understandings of private freehold land ownership. Also, they renew our thinking on what should be the ultimate aim of policies; surely it can no longer be that all people around the globe must eventually move to private freehold land ownership. In relation to land grabbing the continuum of rights becomes essential considering we are dealing (at least in Africa) often times with communal lands. For analyzing the status and rights of those who use the land versus those who (want to) buy it up, knowing other ways to formulate the right to the land are essential.

Similarly, the continuum becomes relevant in programs of country wide land administration projects. [...] What we see in Latin America a lot is that legalizing their tenure formally in urbanization/legalization projects, may actually endanger them with gentrification as the land now becomes more attractive to higher income groups as well and becomes part of the formal land market. In that sense the continuum of land rights can help to analyze policy implementation and/or proposals, intended effects, counterintuitive effects, unintended effects, perverse effects.

Teaching, training and research

Around one third of GLTN partners are members of the Research and Training Cluster and engage in generating new knowledge and training on land tools. These organisations have applied the continuum of land rights in varying degrees and have worked towards increasing knowledge on the subject. Examples include the following: The continuum has been incorporated into curricula at Masters' level (MSc and Master of Surveyor); as a research tool at PhD level (e.g. China, Vietnam, Indonesia); and in ongoing academic and applied research on land rights, types of tenure, impacts of formalization and regularization, and land pooling, in various contexts. It has been integrated into an undergraduate curriculum on land law and human rights and into the development a variety of training programs. It has featured in research and consultancy work to promote the registration of group tenure (cases in Bolivia, Mexico and Panama), and used for the expansion of the concept from land tenure to also include resource rights (in the Amazon jungle in Brazil, Peru and Bolivia). It has been taught and used in conjunction with the Social Tenure Domain Model (STDM), the Land Administration Domain Model (LADM), Fit-For-Purpose Land Administration and other land tools. It served as a framework in published papers and presentations in conferences around the world, as well as in applied research on women's empowerment and land.

A multi-lateral partner used the inclusion of the continuum as a criterion for granting funds for research on land administration systems and land rights, as well as for in-country programming using land and property rights as a catalyst to city development.

Capacity development for land practitioners

The continuum of land rights has been used to develop the capacity of various practitioners working for government departments in various jurisdictions, to develop flexible and fit-for-purpose approaches towards land tenure reform giving people a continuum of options on how they relate to land. As part of this capacity development work GLTN partners have:

- Through institutional cooperation with the Department of Lands and Survey in Jordan, used the continuum of land rights to enhance the technical and administrative capacities of the authority to harmonize discrepancies between digital, fixed and traditionally unmarked boundaries of land plots.
- Applied the continuum in various consultancy assignments commissioned by the Tanzanian Government that focused on different land tenure systems that deal with land use planning, land surveying/parcelling, land regularization, preparation of participatory upgrading plans etc.
- Applied the continuum of land rights in an online course on land rights and value capture (enrolment of 1000 people from 95 countries)

- Designed and presented an annual residential learning programme in innovative concepts, tools and practices in land administration based on the continuum of land rights approach, annually involving more than 30 mid-career land administration professionals from more than 15 developing countries.

Participation and community action

The continuum of land rights is inclusive by nature, offering innovative tenure solutions for those traditionally outside the formal system. Successful implementation can be empowering, in that it requires the direct involvement and agency of affected individuals, settlements and communities. Many GLTN partners, in particular those from the Rural / Urban Civil Society Cluster, have used the continuum approach in their ongoing land work with marginalised sectors of society. For example:

- For group rights registration in the name of mutually established voluntary associations in Namibia. The continuum has served as a tool for community activation and engagement through enumeration and profiling of communities to understand their rights, in anticipation of future implementation of the Namibian Flexible Land Tenure Act. Informal rights to occupy are negotiated between local authorities and communities with a focus on recognition and development.
- As a tool for mobilizing urban farmers of Mzuzu City, Malawi, to form a network, to enable them to intensify their investments, add value to their produce, alleviate poverty and create jobs;
- By partners, municipalities and residents in Uganda, in conjunction with the Social Tenure Domain Model and Participatory Enumeration tools to record land use and tenure rights, as a basis for delivery of services and infrastructural development.

Challenges

The main challenges identified by survey respondents were:

- (1) Many existing dispensations do not support or apply an open, inclusive and flexible approach to tenure rights, and in some cases this is even actively opposed. In the words of one respondent: “The continuum approach on land rights is very dependent on promotion, advocacy, empowerment, political goodwill etc., but there are no enforcement mechanisms and yet logically it puts a lot of attention on empowering communities to claim the rights they have. Therefore, the continuum of land rights suffers from similar weaknesses as any international human rights laws.”
- (2) Given the lack of clarity on land rights in some national policy and legal frameworks, the task of ascertaining a country’s position on the continuum of land rights can be very difficult. Tackling this problem is necessary for assessing progress on how far a country has come in

implementing the continuum of land rights, and what needs to be done. This is of particular concern because there is often a difference between law and procedures in the books and how it works in practice.

- (3) The mere *de facto* existence of a “continuum of land rights” in a specific locality does in itself not provide tenure security. There is no silver bullet to the challenge of improving tenure security. This has been illustrated in the occurrence of numerous mass evictions as a result of infrastructure development and political expediency, in for example Angola and Accra, Ghana. A policy and regulatory framework, and supportive administrative system, need to be put in place to support and enforce a continuum of land rights approach to achieving tenure security for all.
- (4) Land is a political and/or ideological issue. In the words of one partner: “The issues associated with land and property are often posed as technical, yet they are often very political and/or ideological. The continuum appears complex in a market where ‘easy’ solutions (and language) such as titles predominate, even when they are neither appropriate nor practical”. The challenge with applying the continuum of land rights approach is to also tackle those deeply political or ideological aspects.
- (5) The question of “political will” lies at the centre of the operationalization of the continuum in any country context; at the same time, one cannot assume a willingness to recognise a diversity of rights, and to invest structurally in the documentation and administration of those rights. Partners report that they often encounter insufficient interest in, and even resistance to instituting change towards transparent and open land administration systems. Obtaining support can take great effort and time, and is subject to the risks and vagaries of political change. Lack of interest or resistance can come from various quarters and for different reasons: deep rooted behaviour and value systems, professional or elite interests, land not being recognised as a priority, or being seen as too sensitive, and others. Building of sustained partnerships and the cultivation of champions in various sectors are key
- (6) For the continuum of land rights to be of clear and direct benefit to women, intensive work needs to be done to understand and incorporate women’s diverse forms of land access and tenure in various contexts into the continuum approach.
- (7) Translation and interpretation of terminology and concepts associated with the continuum is a challenge, both in terms of language and also in light of differences in existing political and legal systems. As a starting point translation of key texts on the continuum are urgently called for.

- (8) The diagrammatic representation most frequently used to illustrate the continuum of land rights (figure 2) results in unnecessary confusion and counterproductive debate. This is due to a number of factors including:
- a. The non-applicability of some of the tenure terminology given in the diagram to certain countries and contexts;
 - b. The positioning of some of the tenure forms in relation to each other (given relative differences in the security of specific tenure forms per country context);
 - c. The absence of definition of “informal” and “formal”;
 - d. The failure of the diagram to reflect the often overlapping, multi-layered aspects of tenure rights; and
 - e. The implicit suggestion of a progression towards leases and registered freehold as the ultimate or universal providers of tenure security.
- (9) Some respondents found the continuum of land rights to be more appropriate to the (sub-Saharan) African context than e.g. the Latin American context.

3.3 Theoretical Underpinnings of the Continuum of Land Rights

Given the debates outlined previously and the challenges presented above, a series of questions about the continuum approach needed to be addressed. What exactly is the continuum of land rights - is it a theory or a metaphor? What is its purpose? And how should it be applied? Added to these, as already identified above, are various questions around the graphic commonly associated with the continuum concept, portrayed in figure 2. At a theoretical level, the graphic is perceived in some quarters to advocate a strategic approach to land tenure administration which ties in with evolutionary theories of property advocated, for example, by Demsetz (1967) and Hardin (1968). That is, tenure security is improved in increments but that individualized private property is the end goal because individually held private property is the most efficient model for economic growth. Land held collectively leads to a tragedy of the commons, where over-exploitation becomes the expected behaviour as land becomes scarce. This is not the intention of the continuum of land rights as a concept or as a diagram.

The continuum concept developed independently of a critical examination in terms of the vast array of established development theories, property theories and metaphors. Consequently, in the course of 2014-15 research was conducted into the theoretical underpinnings of the continuum of land rights concept. The research has been reported by Barry (2015) under the title “Property Theory, Metaphors and the Continuum of Land Rights”.

The study examined the purposes of the continuum of land rights in the context of a small sample of property theories, development theories and metaphors for describing property relations. These serve as a starting point for examining how the continuum concept may be accommodated (or not) within different schools of property theory. In particular the study examined concepts of modernisation

theory (Coetzee 2001), evolutionary theory of development (Le Roux and Graaff 2001), associated evolutionary theories of property (Demsetz 1967, Hardin 1968) and utilitarian property theory (Alexander & Peñalver (2012)). It explored the debate concerning the bundle of rights (Carmichael 1975) and the concept of ownership (Honoré 1961) and the problems that arise when the bundle is presented as a theory rather than a metaphor to describe a set of property relations. It then examined property theories which resist the control over a land unit by an individual and where that land unit is treated purely as a commodity. It covered personhood perspectives of property where property objects may constitute part of a person's identity (Radin 1982, Hamilton and Bankes 2010), ecological perspectives of a web of interests which argue for tenure systems which recognise land as an ecological and social system in contrast to a set of discrete, unrelated property objects as defined in law (Arnold 2002), and the critique of approaches to tenure administration that romanticise customary tenure administration (Peters 2006). Finally, it examined legal-anthropological perspectives of land in societies where the separation between land law and family law is not distinguishable in the same way it occurs in western legal systems, and how to describe these systems while the powers and relationships that constitute land tenure are themselves changing continually. One needs to look beyond the purely legal relations and administrative instruments and procedures that give effect to them, such as land registration and cadastral surveys. There are rights and interests as they are defined in statutory and common law and customary law, and the actual (*de facto*, concrete) relations as they exist in practice. A constellation of interests in a particular land unit may exist which exist within a household and extend to different towns and villages within a country and to different parts of the globe (Benda-Beckmann *et al* 2006, Barry 2015).

Main findings

The distinction between theory and metaphor is blurred at times, and this has been observed in how the continuum concept is evolving. The field of property theory is vast; written forms date back to the ancient Greek philosophers and there are many theories and metaphors that are relevant to the debate about what constitutes the continuum of land rights, and whether the continuum of land rights is a theory or a metaphor. However, the most relevant ones are discussed here.

There are problems with land management strategies based on modernization and evolutionary development theories. However, what Platteau (1996) labels the evolution of theories of property based on them continues to dominate the development agenda. These evolutionary theories are criticized because they are based on simplistic forms of economic determinism, and the notion of an irreversible, linear evolution to individualized, private ownership of land prevails in many development agendas. Land titling is often a crucial component of strategies designed to improve land systems and their contribution to economic development. Empirical evidence shows that many titling programmes do not produce the desired outcomes as they are often implemented without sufficient

consideration of the factors that are critical to their success. One of these factors is that, in many situations, titles and statute law can only partially reflect the networks of relationships between people who have an interest in a plot of land.

The constellation of land interests framework presented by Benda-Beckmann *et al* (2006) can easily be used in conjunction with the continuum of land rights metaphor. Both assume that, today, continual transformation occurs in land tenure systems. Benda-Beckmann *et al* (2006) use the term “a continuum of differentiation” to describe cross-cultural differentiation in the legal-institutional layer. Where the two concepts differ is that Benda-Beckmann’s approach avoids the formal-informal dichotomy that is presented as part of the continuum of land rights diagram. That said, the continuum metaphor itself can be configured to suit a particular situation. The concept of a constellation of property interests incorporates an interdisciplinary, systems view of property, which embraces personhood perspectives, ecological perspectives and legal pluralism. It is systemic in that it focuses on the entire tenure system. A framework to view property incorporates the micro-level, anthropological view of property to networks reaching into different parts of the world. Land tenure can be viewed from the perspective of three interrelated sub-systems: (1) the ideology sub-system; (2) legally institutionalized, categorical property relations – which may range along “a continuum of variation”; and (3) the actual (*de facto*) social, political and physical relations as they exist in practice.

The constellation framework draws on the multiple, interdependent systems that constitute and influence a land tenure system. If applied thoroughly, an analysis using it should illustrate the complexity of a situation and reveal the different views and agendas of both the agents embedded in the situation, those analysing it and those attempting to exert power and control over it.

The question then is how does the continuum of land rights fit in with this framework? The continuum of land rights is one of a number of metaphors for analysing a complex tenure situation and communicating how it may evolve, but it has to be applied critically and in a way that matches that situation. In general, the term continuum has been used to describe a number of situations and concepts that are relevant to land management, land-use planning, development theory and property theory. Thus a bi-polar representation of a complex phenomenon can be used to show the tension between two of the major competing concepts in a situation (e.g. formal – informal, positive - negative). It is a simple sign and the intended meanings should be easily understood if communicated correctly, and it is well-suited to portraying different, evolving tenure types in a changing situation. If fittingly emphasized, it also communicates that complex social change accompanies the evolution from one tenure form to another. Flowing from this, in an ideal world both the tenure form and the transformation processes should be evaluated and managed.

It needs to be emphasized that the continuum is a tool for explaining, predicting and visualizing how tenure systems may evolve. Referring to figure 2, the two poles on that continuum need not

necessarily be formal or informal, and the evolution of tenure forms is not necessarily from left to right. Moreover, using a single graphic to represent the continuum is not advisable. As the debate surrounding figure 2 illustrates, once a metaphor is translated into a diagram or a model, it starts to take on the characteristics of a theory and the ideology emphasis of the people who generate that graphic. A number of graphics may be generated to discuss, debate and map each situation. The continuum of land rights can be used as a tool to debate, explain and predict land tenure systems, be that from different ideological perspectives, the perspective of evolutionary theories of property, a constellation of interests, a web of interests, personhood perspectives and other theoretical positions.

3.4 Developing a Framework for Operationalisation at Country Level

Section 2 above described the origins and development of the continuum concept, concluding with the current period which prioritises country level operationalisation. GLTN partners recognised that a strategic framework for the operational use of the continuum of land rights approach was required to facilitate in-country implementation. In the course of 2014-15 GLTN partners collaborated in the development of a strategic framework for the operational use of the continuum of land rights approach, with focus on country-level implementation. The framework has been described in Lemmen et.al. (2015) under the title: “The Operationalisation of the ‘Continuum of Land Rights’ at Country Level”.

The process followed included a literature review, consultation through interviews, design and drafting, a validation workshop and finalisation of the report. The ISO 19152 Land Administration Domain Model (LADM) was used as a knowledge and reference framework (ISO, 2012; Lemmen et al. 2015). The strategy was developed in close alignment with other GLTN tools, in particular the Social Tenure Domain Model (STDM), as well as Participatory Enumeration and others.

Main findings

The proposed strategy for implementation of the continuum of land rights approach is based on the concept: “Categorise, Collect, Convert”. “Categorise” involves classification and typology development. An overview of the existing *de facto* and *de jure* land rights is the starting point for operationalisation. A categorisation should include all existing land rights and tenure types: some rights may be extra-legal or illegitimate but they should be identified for decision making in relation to disputes, or for accommodation through pro-active land reform. The overview may include indications about the existence or non-existence of land markets.

A “classifier” for each tenure type is required This is not necessarily a representative of the central government and could be a local or social authority but the authority needs a high level of legitimacy.

The classifier has to develop a classification of tenure types for the tenure system about which information about land rights is being collected.

“Collect” means collecting data related to land rights based on the range of legitimate land rights in a country moving away from only collecting data about registered land rights, to including all forms of legitimate tenures. Such collection should be framed within a fit for purpose approach to land administration rather than high levels of technical accuracy. Collection is based on the classification of tenure. Different tenures can be in place in one area; there may be overlaps or dispersed tenure systems. For each tenure system that is recognised in a certain area, the data that is related to that system has to be collected by a “collector”, who could be a government official, an NGO or a donor funded project among others. The mandate of the data collector has to be clear and should be based around the Sustainable Development Goals (SDG) land indicator which covers both tenure with documents and tenures with perceived security of tenure. Data collection is not a one-time process because data maintenance is crucial. Quality improvement objectives should be established: the first round of collection can be of low accuracy.

“Convert” is about the recognition at institutional level – this includes options for formalisation and maintenance at organisational level and information-infrastructure at technical level. In keeping with the continuum concept, options for conversion from one type of non-legitimate, or legitimate, tenure type to another type of legitimate tenure should be available. This may involve a legal or administrative conversion from one tenure type to another, or it could be a technical conversion as a quality improvement for spatial data within a fit for purpose land administration system which goes beyond fully legal, high accuracy evidence of rights, to include other land tenures with more limited legal and technical evidence.. Conversions should be possible between types of right holders.

A continuum of rights generally cannot be described relative to a parcel, and therefore new forms of spatial units are needed. A model has been developed to accommodate these social tenures, termed the Social Tenure Domain Model (STDM). This is a pro-poor land information management system that can be used to support the land administration of the poor in urban and rural areas, which should also be linked to the cadastral system in order that all information can be integrated.

The term “continuum” applies to land rights, but also to other key dimensions relevant in fit-for-purpose land administration (FIG and WB, 2014; Enemark et al. 2015). Great variations in methods and results are possible, depending on the particular implementation context – there is a variety of corresponding “continuums”, with a continuum of parties, of spatial units, of data acquisition methods/technologies (with a related continuum of geometric accuracy), of recordation/contents/quality, of information management/organisation, and of purposes of land administration.

Implementation of the continuum approach at a country level requires a detailed typology (a complete categorisation) of the various forms of tenures and their mapping. A complete overview is required of the tenure systems and land rights related to the areas affected. All formal and informal tenure categories and subcategories should be identified and related to space. Also land use planning or other planning processes may apply restrictions or responsibilities to certain areas.

At the end of the day implementation of the continuum approach means a recordation of land rights, (social) tenures and resources in integrated information systems. Administering land rights requires that a state and/or social authority/authorities have a mandate resulting in final recognition and publication of all those land rights in one single environment.

Different authorities have different responsibilities in the process of recognition, recording, registering and managing the various tenure types within different areas such urban and rural. Therefore, at national level coordination is needed. For this purpose it is recommended that a National (digital) Tenure Atlas be developed for providing an overview of the spatial distribution of legitimate tenure types across a country, e.g. areas of customary tenure, areas of informal tenure, areas of private ownership, state land, etc. This will help to identify where land rights documentation needs to be undertaken, define zoning for better management of natural resources, identify where a land market can exist and enable administration and coordination between state and customary authorities through co-management [See: Zevenbergen et al. (2012) and Zevenbergen et al. (2013).] The National Tenure Atlas may also be used for project management and performance measurement, as well as supply the overarching framework for land indicator surveys assessing tenure security of the different types, based on the Global Land Indicators Initiative land indicators..

The boundaries of a territory of a tenure system can be labelled as fuzzy, visible or fixed. Those boundary labels should be included in the National Tenure Atlas.

Technical recommendations

In order to operationalise the continuum of land rights at country level, the following technical steps will be necessary:

Develop guidelines for tenure security assessments, categorisation and/or typology for all legitimate tenures within the continuum approach. These should be used to design specifications for the development of the proposed National Tenure Atlas.

Provide an overview of global spatial data providers offering services and tools, including voluntary collected data – e.g. Google Earth, Microsoft Virtual Earth, Open Street Map, MapMyRights, Cadasta, Missing Maps, Open Tenure in FLOSSOLA, CommunityLandRights, Mapping for Rights, Forest People Programme, ESRI solutions, Trimble, Land Matrix, Land Portal, FIG (OICRF,

Cadastral Template) and others. Forums and coalitions could organize this for pilots and to develop business models.

Generic conditions and requirements should be developed for certification of data collectors and data/service providers in land administration.. Minimal requirements should be defined for the administration of lands, e.g. parties,, spatial units, and their relation should be coded. Rights need to be classified in a verifiable way. There should be options for registration of trusted parties and service providers at country level.

Develop and publish an agreed tenure classification and typology, and appoint classifiers at local level. An authority with the mandate to mobilise and certify land data collectors, trusted parties and other key role players would need to be appointed. Clear policy directives should be formulated in relation to Information and Communications Technology (ICT). . The eventual objective would be for all land rights to be classified, mapped, published and accessible, including a due process mechanism. Disputes should be identified and classified through a dispute typology. A dispute resolution strategy and system should be developed and rolled out. Disputes can be represented as spatial units and published as such. Initial data acquisition would not be related to high accuracies in geometry, for economic and practical reasons. Rather, an incremental quality improvement approach linked to the maintenance of land data is recommended.. After initial data collection conversion between tenure types along the continuum may be organised.

3.5 Evaluation Framework for the Continuum of Land Rights

The final component of the recent round of research on the continuum was an evaluation framework to build on the conceptual and applied research, the theory study and the framework for operationalization. In the course of 2014-15 work was done to develop an evaluation framework for the continuum of land rights. The research is reported by Barry and Augustinus (2015) under the title “Framework for Evaluating Continuum of Land Rights Scenarios”.

Evaluation is established as a discipline and as an inexact science, and there are numerous methodologies for evaluating development projects, land administration projects, land tenure types and their impacts. However, there are questions about how different tenure types on a continuum should be evaluated in terms of the social and economic costs and benefits. The processes of transforming from one tenure type to another should also be evaluated. Added to this is the issue of the scale of an evaluation. They may range from settlement level to cities, regions and the national scale. This type of evaluation could be used for the type of continuums found in Southern Africa described by Royston and Du Plessis (2014), or by the continuum design for the future as outlined by Lemmen above, including the upgrading steps. That is, it can be applied to formal, informal and customary settings and where they are inter-mingled.

There are two different problem contexts in which the continuum may be applied: “tame” and “wicked” (Rittel and Webber, 1973, 1984; Barry and Fourie, 2002). In tame problem contexts tenure security may be improved by recognising and adapting the actual, existing practices and adapting the land administration system to accommodate them. However, even in the most tame of land contexts, this does not always occur.

In contrast, wicked land tenure contexts may be characterised by competing ideological positions, ambiguous land interests, abuse of power, patronage, corruption and conflict related to struggles over power and how rules should be made and interpreted, and conflicts over who has the legitimate power to allocate land. Identifying the immediate problem(s) and goals to be addressed is a major challenge. Local level politics is a significant factor when deciding on goals to guide improvement strategies. Moreover, the ranking of the priority of those goals is likely to be strongly contested among stakeholders. Programmes to improve a situation are likely to examine where the maximum leverage can be obtained by making small improvements in one or more of a number of variables (e.g. improve local-level record keeping, improve accountability and publicity related to land records, increase field inspections,, improve access to information), and then re-evaluating what constitutes the problem, establishing a new set of goals, and designing strategies to improve the situation continually as progress occurs in small steps (Barry and Augustinus 2015). Continuum settings are generally wicked particularly where they are outside of the legal and land administration framework. A framework for evaluating continuum scenarios is required that can be used to design evaluations which can handle wicked problem contexts – such as described by Royston and Du Plessis (2014), be applied at different scales, and may be harmonized with other evaluation initiatives using different categories of evaluation.

Main findings

The proposed evaluation framework is based on four general categories of evaluation, which can be linked directly to types of theory (Gregor 2006), as good theory informs good practice (Lewin 1945).

The categories are:

- (1) Evaluations that measure the status of a situation only. Examples are the Worldwide Governance Indicators and the Global Land Indicators Initiative. They address the “what” question only. They provide a score or a series of scores based on aggregates of a number of data sets, but they offer no explanation. The indicators may be used to compare across situations, such as the ranking of countries in terms of governance. They are diagnostic. They tell what the situation is at a particular time, but they do not explain why and how that situation came about. They aggregate a range of data sets in a particular country to generate a

set of indicators. How they might apply in continuum scenarios is discussed under category 2 below.

- (2) Evaluations that measure status with some explanation, such as the identification of correlations between different factors. However, the validity of these relationships is explored superficially or not explored at all. These evaluations are also diagnostic but they may be used as support for theories based on more detailed and deeper category 3 evaluations where the correlations have been explained. As an example of a category 2 evaluation, evaluations may show that there is increased economic productivity and quality of life when people hold land under tenure type A. We do not know if productivity is increased as a direct consequence of people changing their tenure to type A, or if people chose to change their tenure to type A because economic productivity has increased and they need tenure type A to maintain this level of production. In continuum scenarios, an example of where category 1 and 2 evaluations might feature is a municipality's annual report, which quotes figures and changes in particular figures over a period of time (for correlation and impact analysis). Such a report may include counts of transformation of tenure type from A to B; number of tenure type B certificates which have both partners names on them; children who are at school in a particular settlement type; number of households with improved access to sanitation; fresh water and public transport; number of small businesses registered since a change to tenure type B; etc. These figures may be used to justify (or not) existing programmes and projects, the allocation of budgets and other resources, and to motivate for further resources and future programmes and projects. These types of category 1 and 2 evaluations keep programmes and projects going, and they are important in the broader context of evaluating continuum scenarios.
- (3) Evaluations that seek to explain and predict particular outcomes in order to guide some form of design and action to improve a situation. These are likely to be the most useful evaluations in continuum scenarios. They may be used to evaluate the process of transforming from tenure type A to type B and they can be used to evaluate the impacts of the change to tenure type B. They tend to be detailed, in-depth studies of a situation based on qualitative and some quantitative data, using an interpretive framework. They may apply at a range of scales, from the settlement level to country level. At the country level, they are likely to include category 1 and 2 type evaluations in their analysis. These types of evaluations may range from large-scale evaluation programmes or something as simple as a field inspection report in a tenure transformation programme needing immediate attention.
- (4) Evaluations of programmes and projects against predetermined criteria, and the impacts / outcomes of projects and programmes. They evaluate certain types of design and action. These are ongoing project / programme management-type evaluations, post-project impact assessments and reflective studies on the lessons learned in a project or programme. They

employ category 1, 2 and 3 type evaluations, but particularly category 3 in ongoing project management assessments. For continuum settings they are best undertaken through the use of incremental improvement strategies, where evaluations are fairly frequent. 'Management by walking about' and continually monitoring the situation is likely to be a better approach. Unlike stable problem contexts, many of the factors affecting the project cannot be controlled. For example, in a tenure upgrading project, daily or even weekly inspections may be necessary to prevent land or houses being invaded by people excluded from the process. Consequently, existing strategies to improve the situation need to be re-evaluated and changed if necessary (Barry and Augustinus 2015).

The National Tenure Map and tenure categories identified in the section above, could serve as a framework for choosing where to locate country level evaluations to help national decision makers with land policy.

Risk assessment and risk management is an important component of both evaluation and strategy formulation. Bottom up, evolutionary planning and implementation and continual evaluation using an interpretive approach is likely to be more appropriate in these situations. Processes, structures and outcomes are continually monitored, and then incremental changes are designed and implemented according to what the data suggest to managers. The situation is then re-evaluated in the next cycle. The notions suitable-to-circumstances or fit-for-purpose apply. A single, one size fits all approach to improving these situations is unsuitable, and evaluation may need to be continual. This is in contrast to grand strategies which seek to make major improvements with large-scale projects. Interpretive or mixed methodology approaches rather than the purely scientific method approaches are likely to be important for continuum of land rights' evaluations (Barry and Augustinus 2015).

Land evaluation is a complex topic, interwoven with numerous other themes. Design and action based on land evaluation, such as strategies to improve policy, law, planning land administration and land tenure security, should be based on evaluations that fall within the appropriate evaluation category and are suited to the level of uncertainty and structure in the situation. A study should be conducted with a level of rigour and explanatory and predictive power (if desired) that is appropriate to the possible consequences of that evaluation. If a series of studies results in recommendations for action to improve a situation, the conditions under which the perceived benefits might occur should be present or they should be created. Overall, the problem contexts and the four categories of evaluation determine how an evaluation should be designed and conducted, how it should be used and how it should not be used (Barry and Augustinus 2015).

4. Implications of the Research Findings

In this paper we have reported on and explored advances and challenges in the understanding and practical application of the continuum of land rights. We described the origins and development of the concept in stages from the 1980s to the present, against a background of accelerated urbanisation, growth of informal settlements and slums, and the inability of conventional land administration systems to deal with the challenge. We saw how the continuum concept was part of a global shift in the understanding of land tenure, away from a tendency to simply focusing on titling of individually held private property as the ultimate form of tenure security, or the end goal of land tenure reforms. The continuum provides for inclusion of all tenure forms (formal, informal and customary) relevant to a particular context, and lays a foundation for their recognition, recordation, administration and protection within one over-arching administrative and legal system. It also allows for complexity, overlaps, and change, including movement from one tenure form to another, depending on the needs and abilities of the individual, family, group, settlement or community concerned. The continuum of land rights provides room for all, specifically women, and including the most poor and marginalised. And in practical terms, we have learnt that a continuum of land rights can be said to exist when the whole spectrum of formal, informal and customary rights are catered for within a land information management system; and when a range of rights in a country constitutes legally enforceable claims which can be asserted and defended in a forum such as a court.

What does this mean, in practical terms?

The research into evidence of the continuum in practice in five Southern African countries yielded insight into the operation of both deep-rooted and emerging practices and systems which, with adequate administrative and legal recognition and support, would have great potential to improve security of tenure. The research demonstrated the value of identifying and understanding the *de facto* presence of tenure forms as locally articulated (such as a “locally witnessed right to land”, a “locally documented right to land”, a “familial or marital right to land”, an “administratively recognised right to land”) that would be accommodated within a continuum, and the importance of naming these as rights as part of advocacy for more inclusive tenure security. It simultaneously highlighted the need to identify those more fundamental changes that would be needed for those *de facto* rights to be brought into a *de jure* continuum which is known, recognised, administered and protected at local and national level. This implies an agenda for change including new forms of practice and reform of laws and administrative systems. A valuable tool developed in the course of this research was the production of country specific diagrammatic renditions of the continuum, because of their ability to communicate the details of rich and varied tenure arrangements. Locally specific diagrams were invaluable in the presentation of the findings, as an end-point to in-depth research into tenure forms on the ground. In general the continuum concept was found to be highly relevant at country level, as both a descriptive

and aspirational device, to be used in recognising and bringing people into the urban land management process, in locations institutionally and legally on the margins of development. The research also highlighted a need for ongoing advocacy about the continuum concept: in particular its message that diverse land rights need to benefit from the advantages of official recognition should continue to be made; and that people should be able to obtain these benefits without leaving an informal or customary system and entering a formal system that may not work for them, to do so.

The survey to establish the nature and extent of the application of the continuum in the work of key land actors world-wide, as part of the Global Land Tool Network, confirmed growing support and practical application of the continuum of land rights, internationally as well as in specific country contexts. It was clear from the responses that the concept offers GLTN partners a common conceptual frame within which their various tenure terminologies and approaches could be articulated, and also provided access to projects and programmes for testing its application. In this respect the outcome of the survey was a significant endorsement both of the concept itself and of the role played by the network in galvanising efforts for multi-disciplinary and multi-sector collaboration towards land tenure security for all, incorporating both technical and human dimensions, and with an explicitly pro-poor and gender responsive agenda. However, while great potential for consolidation of this work for increased impact through coordination of intensified efforts at country level was evident, a number of challenges requiring attention were also identified. These may be summarised as a set of questions:

- (1) While it is possible to identify the existing tenure elements of a continuum of land rights in a country context, what steps need to be taken by the various role players to get it officially acknowledged, supported and implemented in that same context? What policies and laws are needed to achieve tenure security within a continuum of land rights? Where those laws are in place, what implementation and enforcement mechanisms are needed? What can be done to secure and sustain the political will needed to operationalise the continuum of land rights?
- (2) What specific measures are needed to ensure gender equity in the continuum of land rights?
- (3) How and when will continuum literature become available in other languages? What other steps can we take to make the continuum of land rights more relevant to other regional contexts?
- (4) How can we move beyond the counterproductive debate caused by the commonly used simplified continuum diagram (figure 2)? Is it possible to produce a single, simplified diagram that deals with all the questions that have been raised by the current one? Should there be no single, simplified diagram at all? Or is there perhaps another solution?

Some of these questions were also identified and to some extent addressed in the other continuum research assignments.

Theoretical underpinnings

The theoretical underpinnings study looked at the questions of what the continuum is, what is its purpose and how should it be applied. The study concluded that the continuum concept is not a theory and opted instead to refer to it as a “metaphor” to be used as a tool to debate, explain and predict changes in land tenure systems. This can be done from different ideological perspectives, though the study cautioned against potential dangers inherent in doing this. This brought to light problems associated with diagrammatic representation of the continuum, and the fact that the diagram in figure 2 is perceived by some to advocate an approach in line with evolutionary theories of property that continue to dominate the modern development agenda. These theories assume that individualised property is the end goal because it is the most efficient model for economic growth, as distinct from for example, land held collectively which leads to ‘tragedy of the commons’ situations. Such negative associations confuse the purpose and real value of the continuum as a way of understanding, explaining, advocating and predicting existing and potential future tenure situations, alignments and trajectories. The study usefully pointed to potential uses of the continuum concept in conjunction with the so-called “constellation of interests” framework, but emphasised that it has to be applied critically and in ways that match the particular situation. Specifically the study advised against use of a single graphic, on the grounds that once the continuum is translated into a single diagram it starts to take on the characteristics of a theory and the ideological emphasis of those who generate or promote that graphic. For analytic use, a number of graphics should be generated to discuss, debate and map each situation. This emphasis on multiple graphics echoes the finding of the continuum in practice research (Royston and Du Plessis 2014), though that study also found advocacy use for a single, simplified graphic, whereas Barry and Augustinus (2015) suggest that “a single graphic representing the continuum that is universal to all situations is inappropriate for robust analysis”. Rather, graphical representations should be developed to assist in explaining “the particular problem situation to be improved”.

How can it be operationalised?

The framework for operationalising the continuum study tackled some of the practical challenges of countrywide implementation of the continuum of land rights. Working on the assumption of a prior political process (including “political will”), an enabling policy and legal framework, and allocation of resources, the proposed framework is focussed on the management of the full complexity of different tenures of land in one administrative environment. The underlying concept of the strategy is “Categorise, Collect, Convert”, each stage involving a set of practical steps and institutional requirements. The framework is closely aligned with other GLTN land tools including the Social Tenure Domain Model (STDm), Participatory Enumeration and others. The National Land Tenure Atlas could be an important tool to map areas with different types of non-registered tenures and the

continuums that already exist at country level. This would enable policy makers to easily assess tenure security in the country using land indicators premised on the range of legitimate land rights, as well as undertake evaluations and assess change and impact for economic development and poverty eradication.

Complementary to all this work, an evaluation framework for the continuum of land rights was developed. This framework is aimed mostly at problem context in which the continuum may be applied, namely “wicked” contexts. In complex “wicked” land tenure contexts, characterised by ambiguous land interests, corruption, conflict etc., programmes for tenure improvement would need to be more selective, flexible and iterative. Hence the proposed framework for evaluating continuum scenarios is based on four general categories of evaluation, involving different levels of complexity and requiring differing levels of input and resources, and guidelines on how to choose between them, also allowing for the use of interpretive data.

5. Conclusion

As seen in the introduction, achieving tenure security for all is a daunting task for which there are no silver bullets. The situation is perhaps even more critical today than it was at the time of General Comment 4 and the declarations of Habitat II. However, many organisations are working on promoting tenure security in ways that can broadly be captured under the idea of the continuum of land rights. The Global Land Tool Network (GLTN) is a solid platform for ongoing learning about and promotion of this work. Although considerable debate exists about the continuum, especially its graphical representation, some important advances have been made in our understanding of what the continuum concept is advocating to achieve, and towards its application in practice, including operationalizing and evaluating it.

Although there are debates about the concept, and variations in interpretation, the continuum of land rights concept does add value that can be progressively built upon in the current, in-country operationalization phase of GLTN.

GLTN messaging needs to be clear about the debates highlighted in this paper, especially the findings that the continuum is not a property theory, but a metaphor that can be best aligned with the constellation of rights theory and that a single, global diagram cannot represent the diversity of tenure arrangements between and within countries. Popularizing the production of country and locality specific diagrams may assist with this messaging and improve practitioners’ engagement.

The main value added by the continuum concept is that it offers a shift away from a preoccupation with titling and individually held private property, is a simple call for change in complex contexts, a way of describing and representing new forms of practice, and a foundation for inclusion and building

on existing practice. In addition, and perhaps most important of all, the continuum is an aid to both identifying and advocating for where more fundamental reforms are needed to the land policy, law and administration systems.

The collection of studies represents advances in understanding and knowledge that can serve as a basis for country programme work and global advocacy. The continuum concept will not in itself resolve system reforms but, backed up by tools for describing, operationalizing and evaluating, another phase of the continuum can be envisaged in which it becomes increasingly an approach to tenure security, not merely a concept or a metaphor.

There is a great deal of potential, but much work yet to be done

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Table 1: Development of the continuum of land rights concept

Years	Phase	Summary
1980-1998	Early development	Informed critique of the limitations of the current system and its applicability in the African situation
1999-2004	The emergence of the continuum	The development of alternatives which would be more appropriate (affordable, gender-sensitive, equitable, resource efficient, etc.)
2005-2011	The consolidation and adoption of the continuum	Use of the continuum to lobby the actors for change. Setting up the institutional framework (in the form of GLTN globally), and then building the platform with the development of the necessary tools to make it happen. Securing high level agreement and adoption.
2012-2013	Maturity and challenges	Full adoption and institutionalization of the concept and programmes, as well as an emerging debate.

Figure 1: Main events in the development of the continuum of land rights concept

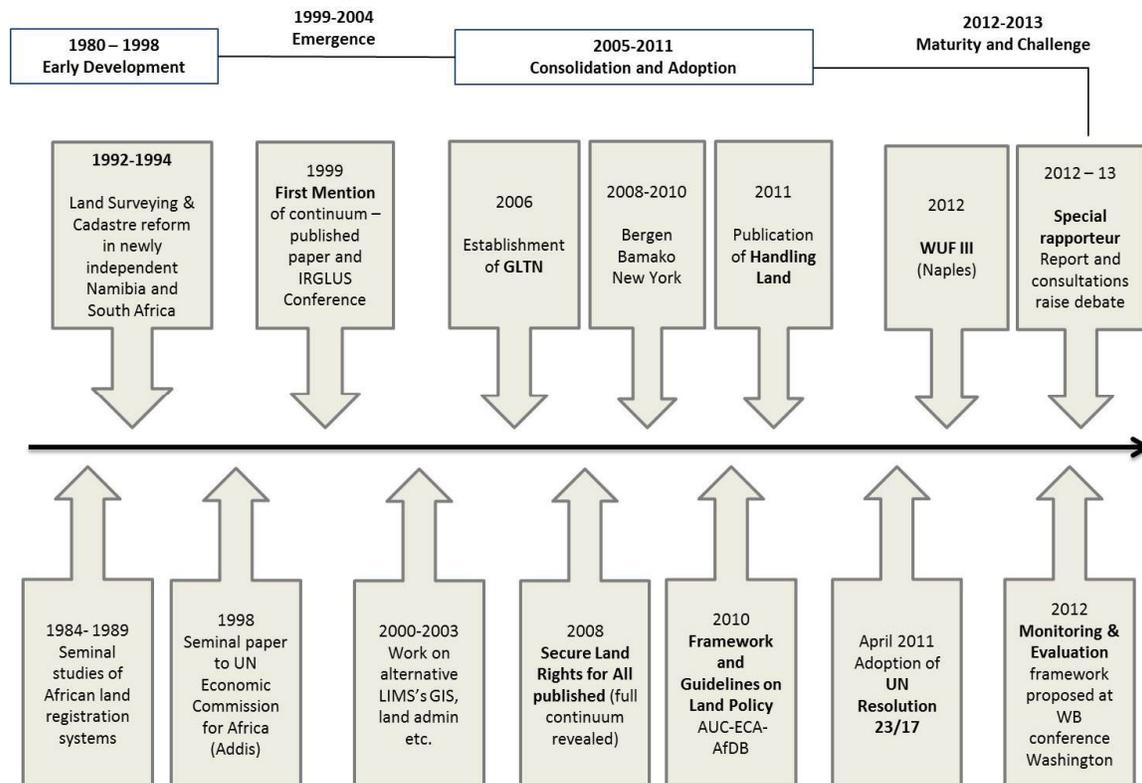
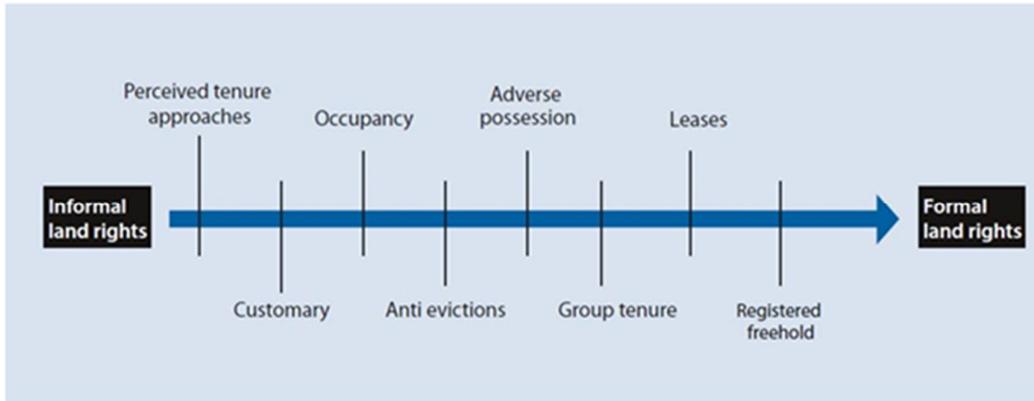


Figure 2: Continuum of Land Rights Diagram in *Secure Land Rights for All*, UN-Habitat 2008



Figures 3a-f: Country-specific continuum diagrams, examples from Southern Africa

3a: Land rights in the case of Huambo, Angola, using the concept of 'recognition'

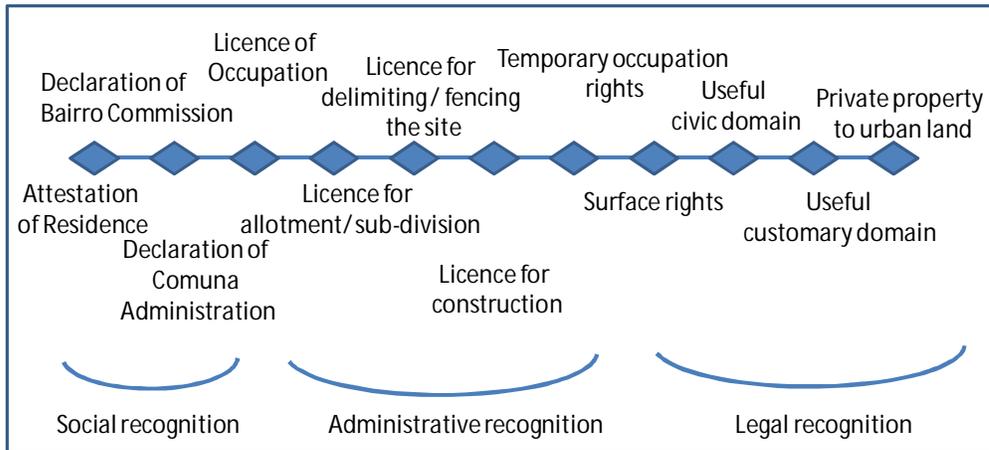


Figure 3b: Land rights in practice in Luanda, Angola (notional coverage of *de facto* and *de jure* tenure)

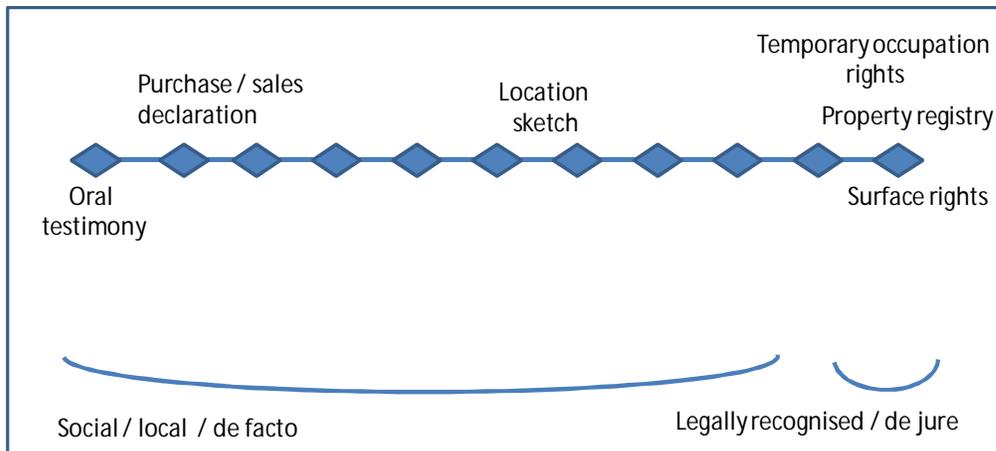


Figure 3c: Continuum in practice in Namibia: applying notions of *de jure* and *de facto* rights

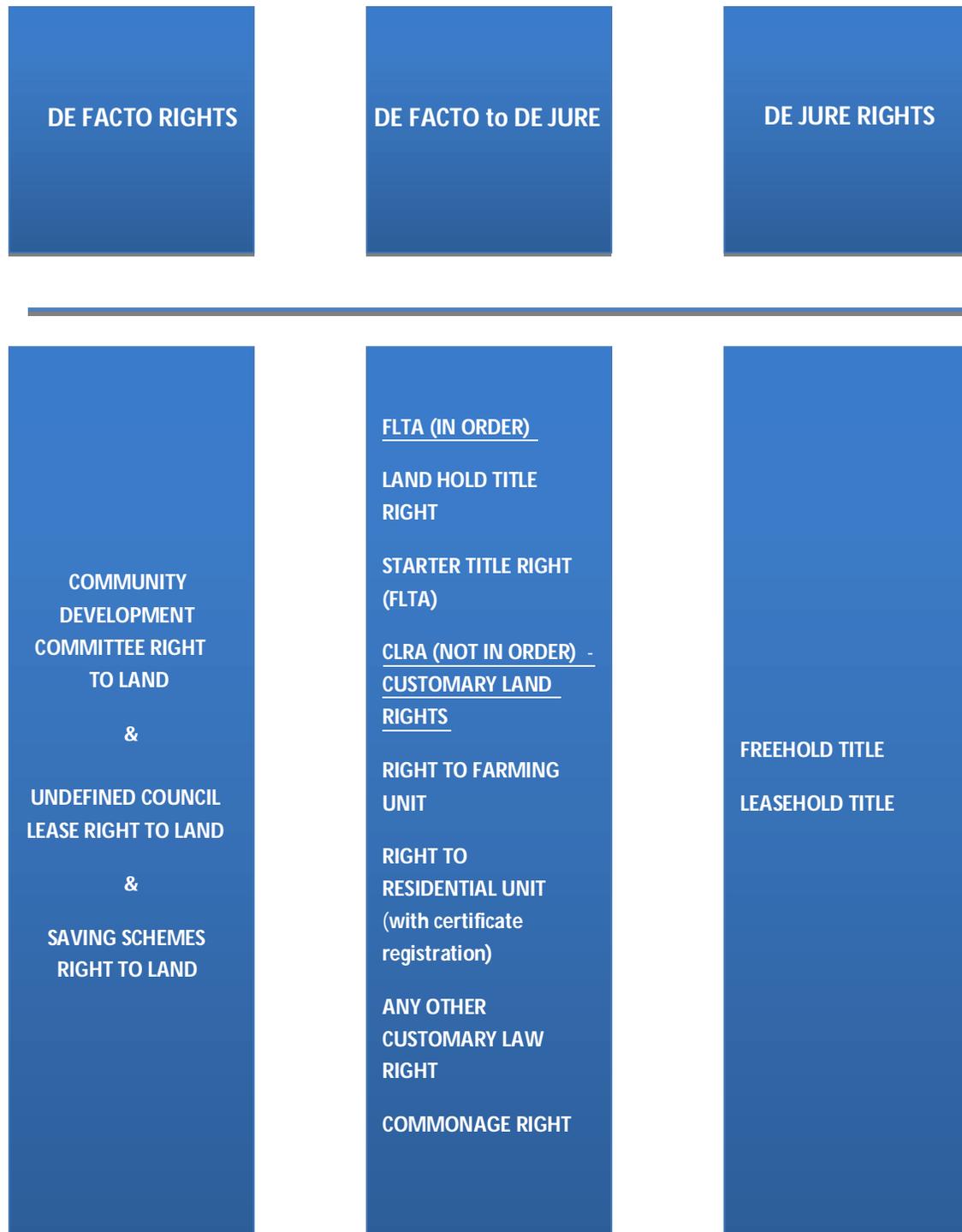


Figure 3d: Continuum of land rights in the case of South Africa: a hierarchical pyramid?

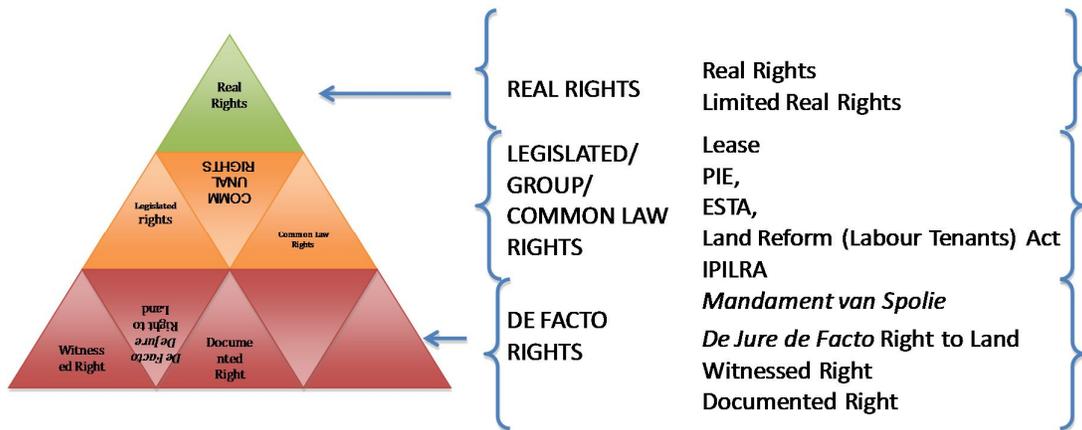


Figure 3e: Applying the continuum in the Malawi context

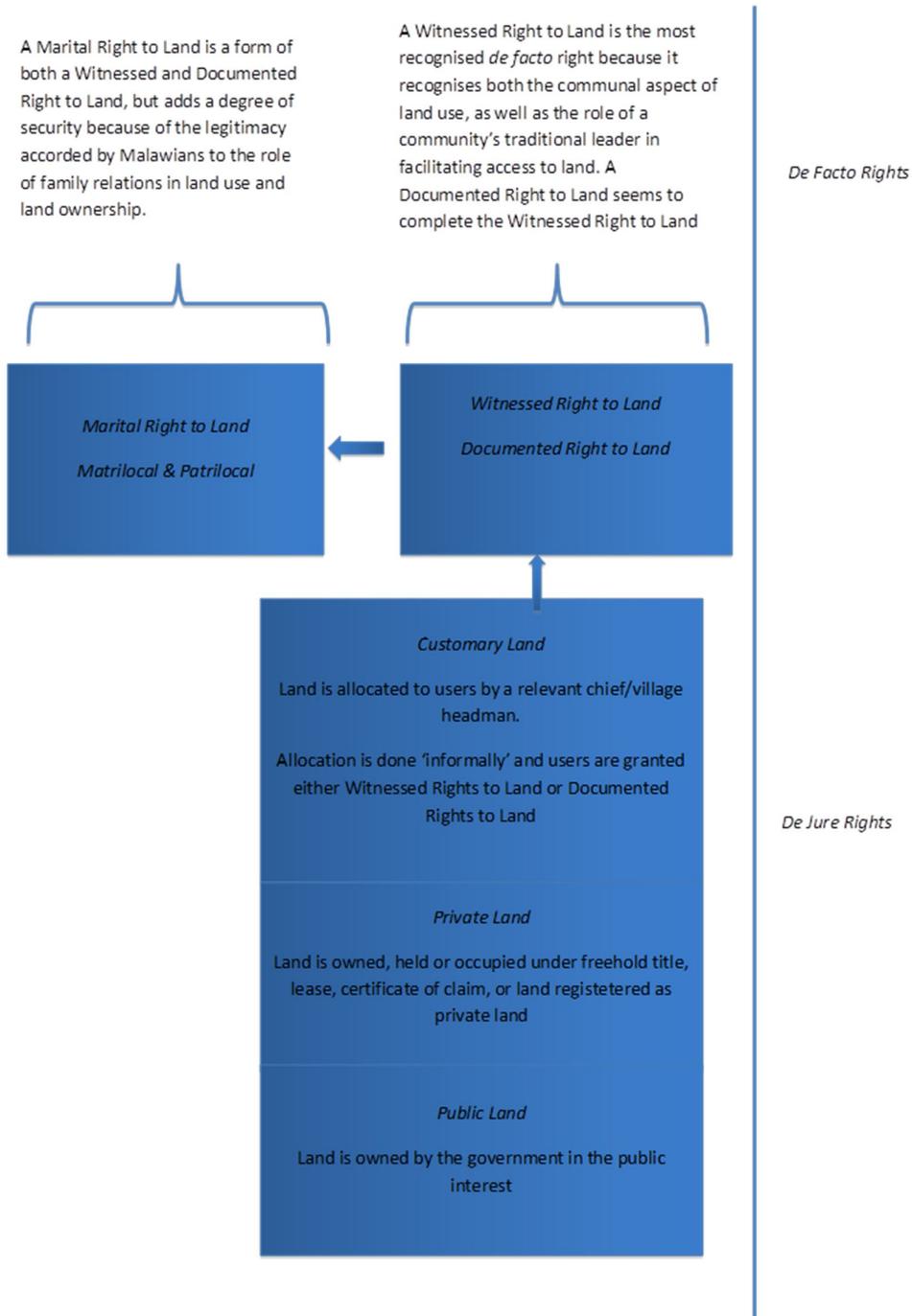
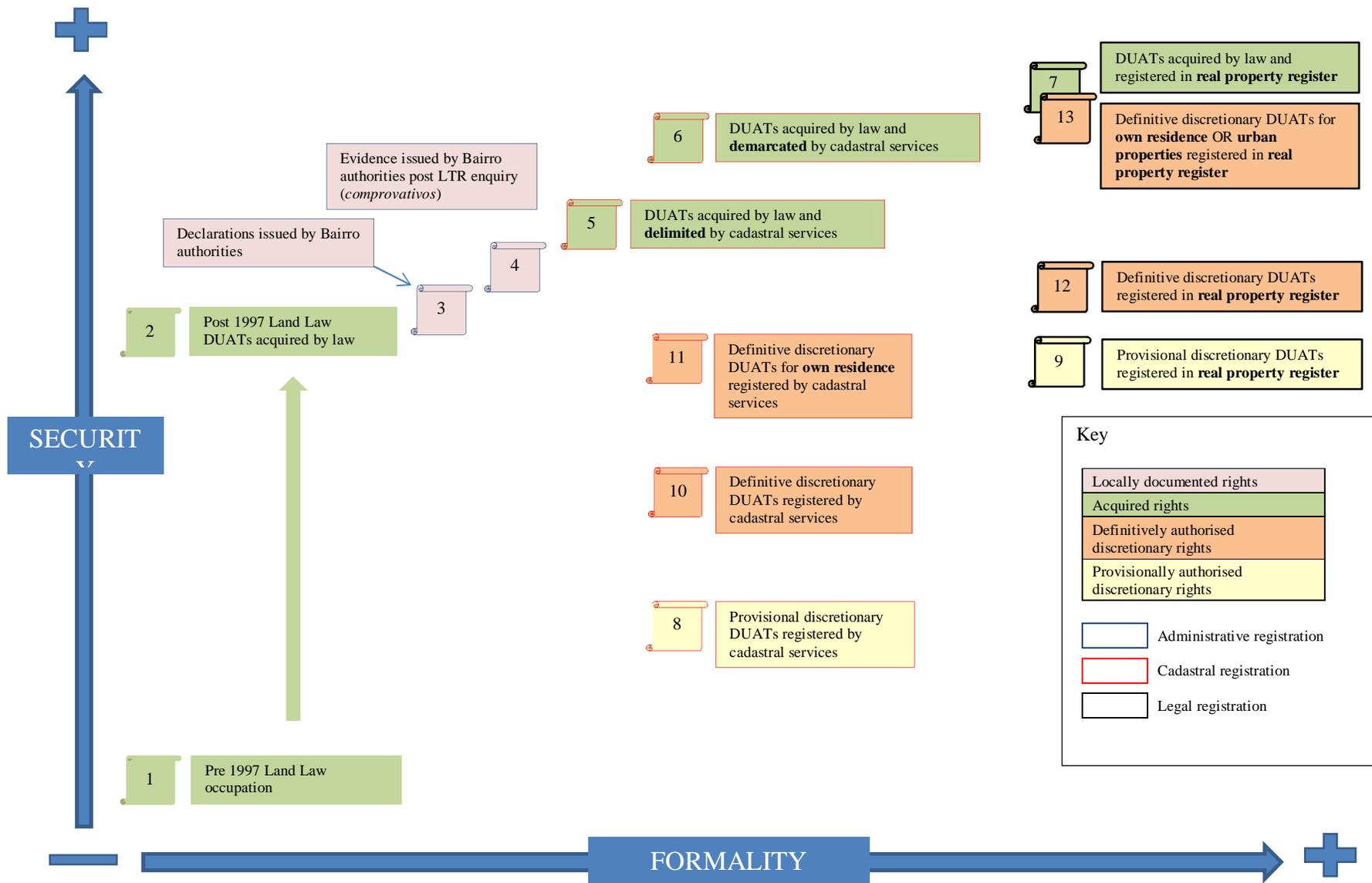


Figure 3f: Mozambique continuum using simple matrix of formality/informality and security/insecurity



GLTN CONTINUUM OF LAND RIGHTS SURVEY QUESTIONNAIRE

Many thanks for taking a few minutes to complete the brief questionnaire that follows. For your convenience you can do this online, by clicking: [The Continuum of Land Rights Partners Assessment](#)

1. Please state the name of your organization: _____
2. In an effort to better respond to the information and knowledge management needs of our partners with respect to the Continuum of Land Rights, we kindly ask that you indicate your knowledge-level on the Continuum of Land Rights approach:
(i) Expert (ii) Fairly Knowledgeable (iii) Slightly Knowledgeable (iv) Not at all aware
3. Is the Continuum of Land Rights relevant to the work of your organization?
Yes No
4. If yes to 3, please indicate the level of relevance of the Continuum of Land Rights to the work of your organization:
(i) Highly Relevant (ii) Relevant (iii) Fairly Relevant (iv) No Known Relevance
5. Has the Continuum of Land Rights been applied in the work of your organization?
Yes No
6. If yes to 5, please briefly state three examples of such application where possible, with a short description of one or two sentences on what it involved:
 - i. _____
 - ii. _____
 - iii. _____
7. Using specific examples, what challenges have you found – if any – in applying the Continuum of Land Rights approach in your work?

8. Based on your experience with and understanding of the Continuum of Land Rights approach – using a specific example – briefly highlight the key considerations (social, cultural, political, technical, etc.) for the successful implementation of this approach.

9. In light of your organization’s application of the Continuum of Land Rights, list the three main opportunities that have arisen from this application:
 - i. _____
 - ii. _____

iii. _____

10. What are the three most important capacity development needs of your organization towards the incorporation of the Continuum of Land Rights approach into your work programme(s)?

i. _____

ii. _____

iii. _____

11. Is there anyone else within your organization whom you would recommend to complete this questionnaire? If yes, kindly state the name(s) and email address in the space provided below.

i. _____

ii. _____

iii. _____

LIST OF SURVEY RESPONDENTS (GLTN PARTNER ORGANISATIONS)

1. Aalborg University, Denmark
2. Action Aid International
3. African Association of Planning Schools (AAPS) (three responses, including two university partners)
4. Arab Union of Surveyors (AUS)
5. Asian Coalition for Housing Rights (ACHR)
6. Cities Alliance (two responses)
7. Comité Technique Foncier et Développement (Technical Committee Land and Development)
8. Earth Rights Institute
9. FIDA Kenya
10. GIZ (Deutsche Gesellschaft für Internationale Zusammenarbeit)
11. GLTN Secretariat
12. Habitat International Coalition – Housing and Land Rights Network
13. Huairou Commission
14. IALTA / Univ. of Groningen
15. Institute of Housing and Urban Development Studies
16. International Institute of Rural Reconstruction (IIRR)
17. International Land Coalition (ILC)
18. IS Academy University of Utrecht (LANDac)
19. Landesa
20. Lantmäteriet
21. Namibia Housing Action Group – NHAG (SDI)
22. Netherlands' Ministry of Foreign Affairs
23. Norwegian Refugee Council (NRC)
24. Norwegian University of Life Science – Centre for Land Tenure Studies
25. Royal Institution of Chartered Surveyors (RICS)
26. Technische Universität München (TUM)
27. The World Bank
28. UN-Habitat Egypt Office
29. University of East London
30. University of Florida
31. University of Twente - ITC
32. Urban LandMark