

Land and Poverty Conference 2016

Scaling up Responsible Land Governance

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

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THE CHALLENGE, 1991

*“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.”*

General Comment 4, UN Committee on Economic, Social and Cultural Rights, 1991



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A RESPONSE, HABITAT II

*“**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.”*

*“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.”*

Habitat Agenda, Habitat II, 1996



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THE SITUATION TODAY

- Accelerated urbanisation and the growth of informal settlements and slums
- Powerful economic forces pushing towards individualisation and commodification of land and housing rights
- Many situations of land conflict, dispossessions, grabbing, eviction
- Conventional land administration policies & systems unable to cope
- Large-scale individual land titling programmes mostly unsuccessful
- An overall trend of growing tenure insecurity, at the expense of poor and vulnerable individuals, groups, communities



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FALLING OFF THE REGISTER

- 70% of developing country populations fall outside any land register
 - In Sub-Saharan Africa: more than 60% of urban dwellers live in informality, and poverty
 - Conventional land administration is too expensive, and where in place is often not working
- Problems of sustainability and inability to implement at scale
 - Inadequate recognition of communal, secondary, group rights, etc.
 - Need to develop an affordable, inclusive, scalable approaches



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THE CONTINUUM APPROACH

*Finding ways of Recognising, Recording and Administering a variety of appropriate and legitimate land tenure forms **to achieve security of tenure for all***



...a daunting task for which there are no silver bullets



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THE CONTINUUM OF LAND RIGHTS APPROACH

- Tenure is frequently understood in binary terms: formal/informal, legal/extra-legal, secure/insecure, *de facto/de jure*
- But in practice a diversity of appropriate, legitimate tenure arrangements exists between these extremities
- Extent of the actual security of such arrangements depends on local legal, institutional, governance contexts
- The continuum of land rights is **a concept, or metaphor**, for understanding this rich diversity
- It is also **an alternative approach** to the dominant focus on titling of individually held private property as the ultimate form of tenure security, or the end goal of land tenure reforms
- It promotes recognition and increase of security **across the continuum**, with opportunity for movement between tenure forms
- The concept and approach are now widely accepted, as part of a global **shift in understanding of land tenure**



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ADVANCES IN THEORY AND PRACTICE

Our paper reports on five research and development processes conducted from 2012 to 2015:

- Research into evidence of the continuum in practice in five Southern African countries
- Survey on the application of the continuum by GLTN partners
- Study and analysis of the theoretical underpinnings of the concept
- Development of a framework for in-country operationalisation
- Development of an evaluation framework



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FINDINGS: SOME HIGHLIGHTS

- The continuum of land rights is not a theory but rather a concept or metaphor which can be used to understand, explain, advocate existing and potential future tenure situations, alignments and trajectories
- It is a valuable aid to both identifying and advocating for where more fundamental reforms are needed to the land policy, law and administration systems of a country
- A continuum of land rights can be said to have been implemented in a particular country situation once:
 - the full spectrum of formal, informal and customary rights are catered for within the land information management system;
and
 - the range of rights in the country constitutes legally enforceable claims which can be asserted and defended in a forum such as a court



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FINDINGS: SOME HIGHLIGHTS

- Our in-country research found evidence of a diversity of deep-rooted and emerging practices and systems already in place
- Examples included: “locally witnessed right to land”, “locally documented right to land”, “familial or marital right to land”, “administratively recognised right to land”, etc.
- With adequate administrative and legal recognition and support, these practices and systems would have great potential to improve security of tenure
- The findings demonstrated the importance of identifying the more fundamental changes 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



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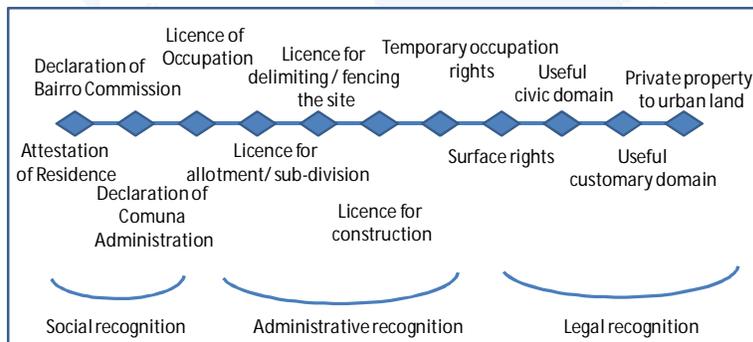
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FINDINGS: SOME HIGHLIGHTS

A very useful tool was developed and tested through the research – the production of evidence-based, context specific diagrams reflecting rich and varied local tenure arrangements on which to build strategies. One example of this:

Land rights in Huambo, Angola, using the concept of ‘recognition’



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FINDINGS: SOME HIGHLIGHTS

- The survey demonstrated growing support and practical application of the continuum of land rights by a variety of land actors, internationally as well as in specific country contexts
- The majority of GLTN's 71 partners are well versed in and actively applying the concept
- The concept has provided partners a common conceptual frame within which their various tenure terminologies and approaches can be articulated
- It has helped to galvanise joint efforts for multi-disciplinary and multi-sector collaboration and land tool development towards land tenure security for all ... incorporating both technical and human dimensions, and with an explicitly pro-poor and gender responsive agenda
- There is great potential for consolidation of partner efforts for increased impact at country level



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FINDINGS: SOME HIGHLIGHTS

- A framework for operationalising the continuum was developed, focussed on the management of the full complexity of different tenures of land in one administrative environment.
- The underlying concept of the framework is “Categorise, Collect, Convert”, each stage involving a set of practical steps and institutional requirements.
- Complementary to this, an evaluation framework for continuum scenarios has been drafted.



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ONGOING CHALLENGES

- What steps can be taken to improve understanding and secure 'political will' and commitment to implement the continuum at country level (i.e. establishing enabling policy, legal, institutional frameworks, allocation of resources)?
- What specific measures would ensure gender equity in application of the continuum of land rights?
- Difficulties of developing and using a single, simple graphic to represent what is a complex concept
- The danger of associating the continuum with approaches in line with evolutionary theories of property that assume that individualised property is the end goal because it is the most efficient model for economic growth
- Need for translation of the continuum concept, both into other languages and contextual articulation (e.g. different legal systems)



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THANK YOU!

NEED TO KNOW MORE?

Attend our MasterClass tomorrow, 17 March, from 11.00am - 12.30pm, in Room MC 4-100

Or contact: Jean du Plessis at:

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