Initial testing of the new continuum of land rights model in a rural South African case study area - Giyani

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TS06A
Introduction

• What is the old model and what is wrong with it?
• New conceptual model for continuum of land rights
• Initial modelling of the continuum of land rights in Giyani, Limpopo
Old Continuum Model of Land Rights

Informal land rights:
- Perceived tenure approaches
- Occupancy
- Adverse possession
- Leases

Formal land rights:
- Customary
- Anti evictions
- Group tenure
- Registered freehold

UN Habitat
What’s wrong with it?

- Evolutionary approach
- Eurocentric approach; neo-liberal approach
- Timeline
- Linear / unitary rights typology
- Weak modelling of flexibility in land rights
- No modelling of mobility between land parcels
- Merge of land rights types and tenure security on axis
Impact on land reform?

• Direct link between land reform and land tenure
• Strong link between land tenure security and land rights
  But, land rights ≠ land tenure security
• Afrocentric approach
  – understand what is good about what we have
  – question existing theory and constructs
  – conceptualisations can inform policy/legislation/practice
  – “fit for purpose”
Data collection

- Choice of Giyani – complex, rural/urban, tribal/customary land, state land, land reform, prior studies, conflict, access - six villages
- Interviews, SGO and Deeds Office, NGI, Municipal data

Information from data

- Coding, graphing, descriptions
Many aspects contribute to land value: high land value complexity

Property institution
Commodity
Capital
Environment

Factor of production
Consumption good

Deity
Nature

Physical space

Few aspects contribute to land value: low land value complexity

Terra Firma
Human right

Land value simplicity

Informal Occupation
Possession
Illegal Occupation

Property

Traditional/indigenous
Religious
Customary/neo-customary

Unregistered Leasehold
Use rights
Unregistered State Land

Registered State Land
Registered Leasehold

Cooperative Freehold
Real servitudes and mining rights

Personal Freehold

Land value complexity

FIG Working Week 2016
CHRISTCHURCH, NEW ZEALAND
26-28 May 2016

Recovery

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Modelling of land value in Giyani

Land value complexity and land rights types in Giyani with the three respondent types
Neutral, accommodates diversity, no timeline, plurality of types, duality of subjects, flexibility and mobility, tenure security is modelled.

See www.sajg.org.za
Using the model with Giyani data
Using the model with Giyani data
Using the model with Giyani data

![Diagram showing tenure security factors with Giyani data](image-url)
Using the model with Giyani data
Using the model with Giyani data
Giyani Land Tenure Conclusions

- Land rights:
  - Overlapping – multiple subjects hold rights over one land object
  - Mixed – multiple rights types over one land object

- Land tenure:
  - Legality: good
  - Legitimacy: high
  - Certainty: weak

- Model on its own
  - fails to reflect strengths of current land rights types for society – written descriptions are still necessary
  - land tenure improvement without changing land rights types
Model Conclusions

• The new continuum of land rights model
  – Land tenure on the vertical axis
  – Three main indicators
  – Complexity – tenure, rights, and overlapping rights
  – Mobility and flexibility
  – Land value complexity as a measure is not refuted
  – Qualitative and quantitative data
  – Deep understanding
    • Interviews, coding, graphing and describing
    • Use of subject, object, value and rights tables
  – Not suitable as a grassroots tool
  – More suitable as a research/policy tool
## Information from data

<table>
<thead>
<tr>
<th>Subjects of Tenure</th>
<th>Examples</th>
<th>Access to Tenure</th>
<th>Termination of Tenure</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Individual</strong></td>
<td>Mr Joe Blogs, Miss Nona Dlamini</td>
<td>Purchase, inheritance, donation/gift, prescription, marriage in community of property. May be restricted by citizenship, ethnicity and/or family lineage. Informal forms: possession, occupation, land restitution.</td>
<td>Death, bequest, gift, expropriation, prescription, sale, natural disaster, occupation/war/dispossession (e.g. apartheid laws), lapse by merger or usability (servitudes).</td>
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<td><strong>Social collective</strong></td>
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<td><strong>– indigenous/traditional group</strong></td>
<td>Indigenous land claims</td>
<td>Social belonging, ethnicity, tribal affiliation, family lineage, inheritance of individually-held rights, occupation since time-immemorial, land restitution.</td>
<td>Social exclusion, death (in some societies ownership does not terminate on death).</td>
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<td><strong>– religious group</strong></td>
<td>Mrs Parker</td>
<td>Inheritance, pre-emption, endowment/donation/gift, possession.</td>
<td>Religious exclusion, sale, death/bequest, gift.</td>
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<td><strong>Neo-customary communal group</strong></td>
<td>Protea Village, Land Claim group</td>
<td>Social belonging, lineage/ancestry, inheritance, occupation over a long time period, donation/gift, land restitution.</td>
<td>Social exclusion, death (in some societies ownership does not terminate on death), donation/gift, bequest, sale within rules of association.</td>
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<td><strong>Non-customary communal group</strong></td>
<td>Shady Pines, Sectional Title Scheme</td>
<td>Purchase, donation/gift, inheritance.</td>
<td>Sale, death/bequest, gift.</td>
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<td><strong>Legal (named) collective</strong></td>
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<td>Expropriation, prescription, sale, donation/gift, natural disaster, occupation/war/dispossession (e.g. apartheid laws), lapse by merger or usability (servitudes).</td>
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Family or household subject should be added.
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<tr>
<th>Concepts of land and its value to mankind</th>
<th>Subjects of tenure and tenure transactions</th>
<th>Length of stay (yrs)</th>
<th>Transactions</th>
<th>Rights Evidence</th>
<th>Boundary evidence</th>
<th>Boundary evidence date</th>
<th>Livelihood control, functioning well</th>
<th>Land use development management</th>
<th>Land ownership and control</th>
<th>Can you sell?</th>
<th>Sell without gov &amp; lawyers</th>
<th>Inherit right to land</th>
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Information from data

Land tenure types

Transactions, or how land rights are accessed