

# EXPERT GROUP MEETING REPORT

“The Continuum of Land Rights: Reviewing  
the concept and investigating the evidence  
in selected sites in Southern Africa”



*9-11 October 2013,  
Johannesburg*



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## EXECUTIVE SUMMARY

This report summarises the proceedings of the Expert Group Meeting (EGM) on “The Continuum of Land Rights: Reviewing the concept and investigating the evidence in selected sites in Southern Africa”, held from 9 to 11 October 2013, in Johannesburg, South Africa. Organised by the Global Land Tool Network (GLTN) Secretariat based in UN-Habitat, Nairobi, Kenya, in collaboration with Urban LandMark, a Southern African GLTN partner, the EGM assembled 20 international professionals, academics, researchers and practitioners.

The purpose of the meeting was to bring together GLTN Secretariat, GLTN partners, international and local experts and implementers, to review the continuum of land rights, with specific reference to the research in five Southern African countries. The experts learnt from and provided feedback to the research findings, explored the evidence of the continuum in practice in Southern Africa, assessed implications of the review and research findings for GLTN and made recommendations on the way forward.

The meeting was facilitated by Jean du Plessis of the GLTN Secretariat. The methodology used was highly participatory, using learning principles and techniques that allowed for ample time for individual and group reflection. This proved to be a successful method for ensuring an honest and open-minded approach, informed and robust debate, and navigation of a range of key issues and challenges related to the continuum of land rights.

The first day of the EGM focused on the presentation of and reflection on the research project findings on the continuum of land rights conceptual review. The second day saw an intense information, knowledge and debate sharing about the evidence of the continuum in practice in Angola, Malawi, Namibia, Mozambique and South Africa. The third day consisted of a consolidation of learning, through a round table discussion drawing out lessons and implications by participants both for their own work and for GLTN.

The main discussions about the continuum model were about simplicity versus complexity of the continuum model, the challenges of its diagrammatic representation, accounting for the market dimension of land, and the relationship between formality : informality and security : insecurity of tenure. There was general agreement that freehold was not an end goal and that one needs to understand a specific reality on the ground in order to address land rights issues. This confirmed the growing international paradigm shift in thinking about land rights.

Acknowledging the quality and depth of the research information presented, with a number of suggestions for improvement, the experts confirmed the necessity of country level

application of the continuum concept, and capacity development of institutions across sectors for the achievement of land rights and tenure security for all. Moving into more country level work would require the development of a new tool, possibly called a 'Continuum Assessment Framework', which could assist in research and documentation of the context specific application of the continuum concept.

The meeting ended on a positive note with forward-looking conclusions and recommendations. That the debates and discussions continued in the days after the meeting confirmed the success of the consultation.

## INTRODUCTION

### Background

The Global Land Tool Network (GLTN) was established in 2006 as a partnership of key international actors working to promote land reform and global coordination of land issues. The network currently consists of more than 60 international partners.<sup>1</sup> The development objective of GLTN is to facilitate the attainment of the Millennium Declaration and the adherent Millennium Development Goals through improved land management and tenure tools for poverty alleviation. This includes Goal 1: Eradication of Extreme Poverty and Hunger (i.e. on food security), Goal 3: Gender Equality and Empowerment of Women (i.e. on women inheritance rights), and Goal 7: Ensuring Environmental Sustainability (on improvement of slum conditions), as GLTN covers both urban and rural land development objectives. The network approaches land and related development objectives through consultations and cooperation at the global and national level, while tool development and documentation are realised on the national and local level in various participating countries.

The project goals of GLTN focus on the development of pro-poor, gender-responsive land tools that currently do not exist systematically at country and global level. When developed and sufficiently supported, these land tools will help to unblock current development obstacles and enhance the delivery of the Millennium Development Goals. GLTN partners have identified 18 tools, or key methods, to successfully implement land programmes. The tools can be divided into the following five themes:

- Access to land and tenure security
- Land management and planning
- Land administration and information
- Land based financing; and
- Land policy and legislation

GLTN seeks to develop generic tools that are responsive to a variety of contexts and constituencies. However, it also recognises the demand for targeted tools that are gender responsive, promote grassroots participation, and are applicable to religious communities and post-conflict situations. As such, it is also focused on eight cross-cutting themes: Capacity development, Conflict/ disaster, Environment, Gender, Grassroots, Islamic aspects, Land governance and Youth. A fundamental concern of the network is how to scale up effective land tool initiatives.

### The continuum of land rights

The continuum of land rights is a key GLTN concept which underlies many of GLTN tools. It is described as follows: *“We can view rights to land as lying on a continuum. At one end are formal land rights, where the owner is an individual, who holds a set of registered rights to a*

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<sup>1</sup> For a list of partners and more detailed information about GLTN, see [www.glt.net](http://www.glt.net)

*parcel of land that are enshrined in law: the parcel is delineated on a map held in a record office; the owner has the right to occupy the land, build on it (subject to approvals), sell it, rent it out, transfer it to his or her heirs, and prevent other people from coming on to it. At the informal end of the continuum are informal rights: a group of individuals (such as a clan) may have traditional rights to use a piece of land. The boundaries of the land may not be clearly marked on the ground or on a map, and there may be no official paperwork certifying who owns or has what rights on the land. In between these two extremes are a wide range of rights. [...] In reality, these rights do not lie on a single line, and often 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 tenure form depends on the particular situation: customary rights, for example may be superior to registered freehold in certain situations. Land tools have to take this continuum into account. This idea is gaining increasing acceptance internationally". (Handling land; Innovative tools for land governance and secure tenure. UN-Habitat 2012, p.12)*

Growing acceptance through the work of GLTN partners of the idea of the continuum of land rights and alternative forms of secure tenure is a part of a fundamental paradigm shift which is underway in the global understanding and approach on land. Ongoing debates have emphasised that the concept is evolving and needs to be reviewed, debated, evaluated and refined over time. To this end the GLTN Secretariat has undertaken to prioritise intensive work in this area in 2012-2013.

### **Researching the continuum in practice**

Based on the premise that there is a growing acceptance of the legitimacy of a range of land rights and alternative forms of secure tenure, the GLTN Secretariat has undertaken a research project titled **Increasing Urban Tenure Security: investing the continuum of land rights in practice in selected sites in Southern Africa**, in partnership with Urban LandMark, a GLTN partner organisation working in Southern Africa. The project was undertaken by Lauren Royston, a consultant based in South Africa.

The purpose of the project is to explore the continuum in practice. The first stage of the process has been to research and describe the historical, conceptual and methodological underpinnings, as well as the context and importance, of the continuum of land rights. Focused in geographical scope on the Southern African region, and on urban and peri-urban contexts, the project has then looked for signs of an emerging paradigm shift reflecting the continuum in practice. It has focused research and partnership development in five countries: Malawi, Mozambique, South Africa, Namibia and Angola.

The project seeks to describe, understand and learn from the shifts in practical terms with a view to consolidating and extending the range of land rights and tenure security. An important element of the project is to respond to GLTN's approach to land tool capacity development. A project reference group was established at the outset, to play an advisory

role at key stages of the project. The expert consultation was an important step in the project cycle.

### **Purpose and Objectives of the Expert Group Meeting**

The purpose of the Expert Group Meeting was to bring together GLTN Secretariat, GLTN partners, international and local experts and implementers, in order to review the continuum of land rights, with specific reference to the research in five Southern African countries. Specific objectives were to learn from and provide feedback on the research project findings, to review the continuum of land rights concept, to explore evidence of the continuum in practice in Southern Africa and to assess the implications of the review and research findings for the GLTN and make recommendations on the way forward.

### **Participants**

A total of 20 people participated in the meeting. Each participant had either directly been involved in conducting the research, or had been interviewed as part of the process. The list consisted of GLTN Secretariat representatives, project reference group representatives, international and local experts and representatives of five Southern African countries where the project research had taken place, viz. Angola, Mozambique, Namibia, Malawi and South Africa. (For the programme and list of participants of the meeting, see ANNEXES A and B.)

## SUMMARY OF THE EGM PROCEEDINGS<sup>2</sup>

### Session 1: Review of the Continuum of Land Rights

#### Opening remarks: Clarissa Augustinus

In her opening remarks, Clarissa Augustinus of the GLTN Secretariat emphasised the importance of land rights but stressed the equal importance of the underpinning systems, as well as legal and institutional frameworks. She emphasised that a range and a continuum are different. The continuum of land rights concept is also about legal sub-systems and it is based in the fact that people need to be able to move through the legal system and sub-system. However, there are still policies that support ‘freehold’ as the only legitimate form of ownership. It is important to produce tools that will change this policy.

#### Presentation of the research findings: Lauren Royston and Mark Napier

The presentation of the project research highlighted a brief history of the development of the continuum of land rights concept and focused on the current debates and recommendations for the way forward.



The early development of the idea of the continuum started in the 80’s and 90’s and the key points made in the literature at the time were that a cadastre should be able to accommodate a range of tenure types, to reflect the reality on the ground and to suit the desired societal and political outcomes. The next phase was the emergence of the continuum concept in the early 2000’s. The idea of progression through different tenure situations was discussed with the need to promote more affordable and accessible approaches to tenure change. The continuum idea was then used for advocacy, to call for changes in land administration practices. An “adoption” phase followed in 2005 – 2011, and coincided with rising debates including that of “registered freehold as the goal”. The GLTN

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<sup>2</sup> Copies of the presentations made at the workshop can be obtained from the GLTN Secretariat on request. Finalised versions of the research findings of the project will be made available in due course.



was established during this period and the landmark Resolution 23/17, which recognised the contribution of GLTN and the importance of intermediate tenure and incremental approaches, was adopted.

Presently, the continuum concept has become a normative device but new debates have emerged. The current debates focus around the clarity of the concept and its representation on the diagram. The main debates are formed around several key questions:

- 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 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 one dimensional approach?
- Is the continuum applicable in only some legal contexts and not in others?
- What is the purpose of the continuum?

Based on the review, the presenters made preliminary recommendations:

- Advocacy is still needed, especially at country level and a simple diagram is the most appropriate for this purpose
- In due course having a generalised diagram may become less important, as country specific support is undertaken and the argument for the primary informality/formality dimension, rather than an insecurity/security dimension is convincing for this advocacy purpose.
- However, the GLTN should consider how to better communicate the idea that tenure can be more or less secure within the different categories or forms, rather than across them as the progression seems to communicate.
- A simple matrix is the most obvious graphic to communicate a second dimension, in this case the security dimension.
- More country level and country specific work should be done on existing tenure arrangements and strategies/tools should be developed for supporting the country level implementation and a range of rights in practice.

The presentation concluded that the implications of the review for the GLTN are that the simple message of the continuum, that can be lost in the debate, remains pertinent and that advocating this message should remain central to the GLTN's work. It is important to explore the development of a continuum tool for this work and to build up a new body of representations, graphics and visualisations, together with documented evidence of the continuum in practice, from the country level work, for a subsequent phase of global advocacy.

### Response by Jaap Zevenbergen, University of Twente, ITC

When talking about the continuum concept, we should pay more attention to the counter discourse that is still striving for full registered freehold, as there are still many national governments and donor projects that do not subscribe to the continuum. Another question is whether this discourse is being shared across different professions and whether they are changing their discourses? Some professions are not buying into the continuum and it is important to take note of this.



A graph from 2004 should be mentioned in the report. There was an issue with an arrow pointing up and with freehold being located at the top of the line. In *Handling Land*, it was suggested that the arrow be taken out, which shows that there has already been considerable thinking and debate about this. Another issue with the current diagram is that it needs too much explaining while a model should actually be a simplified representation of reality for a specific purpose. This model needs a thousand words to explain it.

In reality the continuum is not a straight line, it is rather bi-directional. He posed a question of whether there is an ideal type of tenure and emphasised that tenure security is always context dependant, where even in developed countries freehold is not the only or even the most common type. The high prevalence of apartment rights with a lot of common, public areas in many countries, are a good example of this.

The arrow in the current diagram is oversimplifying a mix of regimes, forms, types and the level of documentation. Furthermore, we often forget to ask how the holder got access to a piece of land or a property; and if we ask people their answer will not focus on getting the paper. The deeds system is then more natural because people can say how they got into the house or onto the land.

In regard to capacity development, there is a distinction between preaching and teaching. For preaching purposes the model seems to have worked, but there is a tendency to debate within the 'converted' circle where there is already an awareness of the limits and

simplifications and to forget about the 'non-converted'. For teaching purposes, there is a need for a more in-depth model and theory. An open question is if there is a need for diversifying the model for different disciplines and this is something to think about in the future.

Finally, there is a need to move from the policy debate to actual policy formulation and then to the implementation aspects, as well as the need for practical tools to enable this.

### Highlights of the discussion

After the presentation of the research findings and the response, the floor was open for the discussion. The EGM participants were asked to give general feedback on the research presentation as well as specific comments on the debate and the recommendations. The key points of the discussion were the issue of simplicity vs. complexity of the continuum concept and the diagram, and the market dimension of land. Some of the highlights are as follows:

- There is a parallel discourse about land which is also important, and that is about evictions. In Old Fadama slum in Ghana, the people have resisted evictions and it is not about the land rights and legal implications, but rather about the power of the community to resist them. Organised communities do not get evicted, while small or unorganised communities are evicted all the time. It is important to include community mobilisation and power in the current debate of the continuum. The world is more global than we think. What unites people is not a definition of their tenure or the rights, but how you protect those rights, how you call on those rights. The best strategy on this is not to rely on lawyers but to mobilise communities and strategies to do this are country specific. On the other hand, we should be careful of the use of the word *communities* as they are heterogeneous. We should identify tenure options that are vulnerable to political change.
- In Nigeria, the scale of informality is very significant. The discourse is binary, about evictions and about what the government does or does not do. However, what the continuum conveys is that the problem is not a binary problem. In some countries the solutions are more nuanced. The continuum should remain simple because sometimes the debates are very simple.
- The problem is the way the continuum is used and understood. It is simple and useful for advocacy but there is the need to explain the specifics. The complexity of it can be hidden and we should be able to provide a tool which is complex in its workings but which yields clear answers. There is also a lack of recognition of the two major driving forces behind the continuum: the market and the power of vested interests. Land value changes tremendously when land rights are granted and people can be displaced when tenure security is 'realised'. We should therefore also look at land values and vested interests, even within the administration.

- The question is not whether freehold is the most secure form of tenure, but who has access to freehold. Tenure security and accessibility are complementary and we have to understand and address both.
- The debate is too Africa focussed and more comfortable with the Anglo Saxon legal tradition. In Latin America, urbanisation has changed the discussion on customary rights and group rights. It is important to recognise the diversity and the range of forms and legal systems should accommodate and validate them all. Some legal rights are not better than the others, for example ownership rights are not intrinsically better than leasehold. The global push for individual freehold cannot be denied. The GLTN continuum diagram implies general movement towards registered freehold.
- There is an important question of the security 'for whom' and 'for what'. The report is too centred on the interests of the individual and misses the interests of the city, and the public administration and society as a whole. Temporary licence of occupation can be better from the viewpoint of public administration. The state also needs to keep control over public land. The continuum concept is unsophisticated when it comes to dealing with competing interests.
- How do you manage complex commodity markets in cities where the developers, capital, investors, residents, public administration are all together in the process of building dense cities? What is the model which is scalable from the perspective of city building? Is this really about security only? Is there not stagnation in city development when people are secure and cannot be moved? What is the alternative to freehold and leasehold? Can the continuum address this? We should not just be reactive around responding to insecurity, we should promote a model which can proactively and fairly build cities.
- We should look at the continuum differently in different countries. In post conflict countries, where judicial systems are weak, a title means less than it would in some other countries. In countries with a weak legal system the continuum may need to be reconfigured.
- In addition to the rights, there should also be a continuum of responsibilities, obligations, restrictions. When starting a registration programme, one has to look at the cost too.
- There is an agreement that the tools are needed. Different sets of actors and relationships to deliver on the different forms of tenure are needed too. The natural trajectory is to have a set of tools for the continuum and then start investing in institutions and relationships that carry those tools – communities, professionals, academics, governments. The question is – where is the policy needed and where is the capacity?
- The purpose of the continuum should be clarified. The report helps identify a normative purpose to describe something ideal or envisaged – which is suited to a global advocacy strategy. An additional, or alternative, purpose of the continuum

diagram could be a descriptive one – which reflects actual situations. For this purpose, it is necessary to have a more complex representation. This is something which the discussions returned to again and again.

## **Session 2: Evidence of the Continuum in Practice in Southern Africa**

### **Presentation of the Legal Review of the Southern African Cases: Peter Rutsch, Independent Lawyer**

The task was to examine the laws of Angola, Malawi, Mozambique, Namibia and South Africa, to examine how they react to challenges of in-migration and intra-migration to urban centre creating large informal settlements. Customary law is significant; it is present, real and practiced in varying degrees in these five countries, but in giving it a legal content it may vary from the perceived content of customary law. Another challenge is a question about whether the response to rapid urbanisation is transformative or whether it simply reflects a process of co-opting the new residents into established tenure regime. Existing tenure systems tend to be Eurocentric and must be transformed to reflect the African perceptions that people actually apply, whilst at the same time being commercially functional in the 21<sup>st</sup> century.



A common factor in the law in Angola and Mozambique is that the land rights are extended by the state for productive or purposeful use. In South Africa, Namibia and to some extent in Malawi, land owners can be absent and the land largely unused if rates are paid and land maintained. Each country is different in how their legal systems emerged, and in their current situations and challenges. Each of the countries is engaged in transforming their land tenure regimes as urban centres are brought under pressure by in-migration creating informal settlements. The extent to which authorities react to this challenge is determined

by the extent to which they are willing to introduce newer, innovative, affordable and acceptable forms of tenure.

The presentation was concluded with a statement that it all depends on political will and state capacity to make introduced systems work.

### **Response by Edesio Fernandes, International Research Group on Law and Urban Space**

The respondent asked questions and provided comments to the legal review in the light of Latin American experience. The first question was if the customary rights can survive growing urbanisation. Traditional communities, leaders and practices change as traditional tribal, ethnic, cultural and religious links are challenged. Traditional forms have largely been supplanted in Latin America and new forms have been created by exclusionary legal systems.



The second question is that of legal pluralism – there is a risk of assigning second class rights to second class people, in a way that they are not fully validated by the relevant institutions. There is a need to legitimise the rights through an integrated system in which different tenure forms and diverse rights are articulated.

Thirdly, are our systems developing in such a way as to cater for the growing need for or emphasis on collective land rights, reflecting the collective nature of informal territorial arrangements? Furthermore, do we plan for the escalating commodification of cities, where new socio-political dynamics are no longer around land rights?

In conclusion, the respondent drew attention to the cost of formalisation and responsibilities that come with rights, including taxation, insurance, service charges and utilities, and posed a question whether people are satisfied with their current arrangements and whether they want to incur these costs.

## Highlights of the discussion

- Why are we trying to force a full system of rights and registries on countries, when, in fact, many European countries have much 'lighter' systems which do not require all the elements?
- Officials keep to what they are taught at school. People on the ground have a different reality which is not based on books and documents. There is a need to bridge this gap.
- There is a big market in 'non-transferable' rights. We should try to measure the cost of achieving the different kinds of rights, and the cost of transferring them, as well as the impacts of resultant rising land values.

## Presentation of Findings of the Review of the Continuum in Practice in Angola, Namibia and South Africa: Lauren Royston

This part of the research was guided by two main broad questions about the relevance of the continuum in a specific country and about the range of rights that currently exist, informal and formal and a range in between. There is evidence that the continuum is indeed relevant and that a range of rights is present in all of the three countries.

Some good practice examples were found in all of the three countries. Land management administrative mechanisms are often developed to grant more security of tenure where there is a need to plug legal gaps. In some countries administrative recognition is sufficient protection against eviction, and in other legal protection is essential (e.g. Malawi vs. Angola). In Namibia, the Flexible Land Tenure Act is a good example of a bridge between *de facto* rights and *de jure* rights. In South Africa, a good practice example is a Regularisation Programme in Johannesburg, which uses a town planning mechanism to legally declare informal settlements as transitional residential settlement areas, therefore immediately transforming their status into a legal status, which enables provision of services to the community.

Another important question is what some of the preconditions are for innovation to happen and the answer has proved to be that there are very specific in different cases where there has been success.

In conclusion, the researcher pointed out at the need for more continuum-related research and assessment tools, the need for empirical case study work and for meso-level research as there is a lot of literature of a generalist nature and some detailed studies of particular settlements but very little in the middle.

### Response by Alain Durand-Lasserve, CTFD, and Harris Selod, World Bank

The emphasis of the response was on conceptual issues relative to the continuum and the need for methodological tools to make better use of the continuum concept.



The continuum is not an objective per se, but it is rather a snapshot of a range of tenure situations. It needs to be contextualised, both in the analysis and in the implementation phase. A list of tenure situations is only the first step and a multidimensional approach is necessary. Furthermore, operational tools have to be identified with reference to local contexts. There is also an ambiguity on the diagram regarding the link between land tenure formality and security. The simplified presentation is a source of debate about the correlation between the two. It does not reflect potential contradictions of formalisation which may not necessarily increase tenure security, as there are potentially conflicting objectives of formalisation, for example tenure security for households, tenure security for investors as well as making land a transferable asset. Moreover, there is a need to identify categories of tenure situations within the continuum and to develop better indicators for measurement of tenure situations throughout the continuum.

The respondents also addressed the dynamics within the continuum, noting that the analysis of the range of tenure cannot be static and that there is a need to document transitions along the continuum and to recognise that the shifts towards formalisation may be reversible. There is also a need to understand the determinants of the dynamics, which could be related to the role of the government and private institutions in land delivery, land administration capacity, rules and practices or it could be economic factors. In addition, tenure situations form a system and changes in access to land or tenure security in one category within the continuum has consequences on another categories.

The broader economic, social, political and environmental context has an impact on land tenure and thus on the continuum of land rights. This broader context is also subject to



change, which in turn may affect land tenure options. The key drivers of change include land tenure systems, land governance and land markets.

Another important point made was about institutional perspectives. There is a vulnerability of alternatives to land titles and not all alternatives are necessarily better. Likewise, administrations may or may not support the provision of alternatives to titles. There is also a need for political economy analysis to answer who benefits and who loses from alternative approaches. Additionally, there is an operational perspective in all this and a question of what institutions need to be reformed and/or strengthened. As mentioned, land markets are one of the key drivers along the continuum and they can affect tenure security options. Therefore, there is a need to account for market responses in policies aimed to improve tenure security.

In conclusion, the respondents emphasised the four key dimensions to be accounted in the basic description of the continuum of land rights: level of formality of tenure options, associated security, land markets and accessibility (who has access). They supported the proposals for more studies at meso-level and the design of comprehensive analytical tools that can be applied to diversity of situations (e.g. land market assessment and political economy analysis of institutions), which they termed a 'Continuum Assessment Framework'.

#### **Presentation of the Findings of the Review of the Continuum in Practice in Malawi: Cynthia Phiri, Urban Research Institute**

The presentation started with a description of the customary system as it worked in pre-colonial times, colonial times and post-independence. At the present time, 80% of urban population in Malawi lives in informal settlements. Involuntary evictions do not happen and relocations of entire communities happen when customary land is converted into public land, when compensation is usually given for land and property.



Regarding the system, the customary law is present and allocation on land is undertaken by chiefs and documented by chiefs leading to some level of formality and security. However,

as more land changes the more secondary buyers feel insecure and seek to have formalised tenure. The continuum in Malawi may not be very vivid but there exists a range of land rights in practice. These range from *de jure* to *de facto* rights. Land can be government owned or privately owned, held or occupied under a freehold title, lease, certificate of claim or registration; it can be allocated to users by chiefs since the witnessed right to land is accepted in Malawi in addition to the documented right; in this category there is also a marital right to land, under the matrilineal and patrilineal systems.

A good practice example in Malawi is the community led slum upgrading, undertaken in various cities, where communities in informal settlements are organised to do a settlement situation analysis, enumeration, settlement mapping and settlement planning. Tenure security is ensured through the provision of basic services. In addition, there are various land sector initiatives, such as the development of the National Slum Upgrading Strategy and National Urban Policy, Urban Structure Plans, capacity development initiatives and private sector initiatives.

The presenter highlighted the need to focus on urbanisation process and not only on rural issues and concluded by calling for the promotion of a national advocacy approach for a range of land rights taking advantage of current legal and policy reform, and stating the importance of the capacity building that focuses on community level utilising local structures.

#### **Response by Jack Makau, Shack/Slum Dwellers International**

The first reflection was that the research paper places the Malawi Land Bill 2012 (conventional) in the same land discussion as the community-led Citywide Slum Upgrading (unconventional land approach) and the City Development Strategy (global urban agenda) and this is very powerful. The continuum makes it possible to put all these efforts together. A question posed here was whether the continuum had then achieved its powerful advocacy role and whether there is a further or subsequent role such, as a technical or monitoring role that it could achieve.



Another question that arose was whether an assumption was being made that the security of tenure is purely for long term, settled land use. Does the continuum allow us to look at the shorter term transitory needs that constitute life for many people in urban centres, where people are not always there to settle in one place, but have more complex, transitory needs?

### **Mozambique case study: Lauren Royston**

In Mozambique, the land is the property of the State and cannot be sold or otherwise alienated, mortgaged or encumbered. The right to use and benefit from the land is the only right in Mozambique, but there are three routes into the right: customary occupation, good faith occupation and authorised application for title.

An interesting finding is that most people feel that their rights to place (tenure security) are strong. Another indicator found in the research was that the majority of respondents have made improvements to their houses after moving in. When it come to the existence of disputes, only a very small proportion (6-7%) of respondents indicated that they had experienced conflict around their property and those disputes generally tend to be about boundaries. Arbitrators in the disputes are the ward secretary, the head of the housing block and neighbours, which shows that there is a social dimension as well as political in the management of land. Regarding land acquisition, the research has shown that most people become owners by buying the place, by being allocated a property by the municipality or through inheritance.

The research looked into the capacity development dimension too and found that, although there is a current policy to encourage registration, the process is long and complicated. On one hand, the Land Law is innovative, but on the other, approaches to land administration are still very conventional and poorly adapted to the law. The implication of the new policy and legislation for the interaction between customary, elected local structures and state local administration remain unclear, especially in terms of their source of authority and legitimacy.

A very important finding was that the public resources allocated to the community and occupation aspects of the Land Law, especially to protecting the good faith occupation right, are very limited. The focus of the attention is on facilitating and recording land use rights (DUATs) awarded by the state to investors and others not eligible via the occupation routes. The result is a cadastre that is very incomplete, and which contains mainly information on a very small percentage of the land rights recognised by law.

In practice, the rights that the law recognises are very vulnerable to expropriation and capture and there is a growing sense that there is a need to formalise these rights. The Land Law is being used to develop local land bringing very few real benefits to the communities who are ceding their rights over very large areas.

The presentation concluded with suggestions about the capacity development needs. There is potential in the existing structures and there is a need to develop the tenure security potential of local arrangements, in terms of equity, accountability of local leaders, and greater reach (to reinforce the security of tenure of people with the right to use and benefit from the land in good faith). There is also a need for awareness raising and access to legal aid. Finally, an issue of joint DUATs in an urban context is relevant because it might provide an immediate level of security to a settlement without getting into detail of individualised plot boundaries and individualised claims.

### **Response by Julian Baskin, Cities Alliance and Els Keunen, GIZ**

The first respondent opened his presentation by emphasising the need to understand and document the context and its history in order to understand what is going on in a country, especially in a country like Mozambique. He briefly presented the country's historical context, drawing attention to the relevance of very weak colonial administration, one party Marxist/Leninist state and the central planning, the war, large scale natural disaster, poverty and the protracted period of economic growth.

The current situation is marked by an unclear divide between party, state and civil society. This means that the right to land that a person has been given depends on the strength of the relevant party structures on the ground, which makes those rights very weak, especially in places where there are large private sector investments, where the rights become negotiable. The most obvious example of this can be found in the city of Tete, arguably the fastest growing city in the world.



The next respondent presented GIZ activities in Mozambique and linked them to the research report and the findings. GIZ has a Decentralisation Programme which is aligned with the National Programme and its main focus is on strengthening District and Province Governments. The Programme provides practical support, performing a key role in supporting municipalities to develop and organise their land administration systems.

Finally, there are significant challenges in building local capacity versus a donor role in driving on-going technical assistance. A very interesting example of a land administration challenge on the ground comes from a rural municipality with estimated population of 42,618 and where a number of DUATs given in the last five years is one. Another challenge is in the physical organisation of the land register, where some current registers date back to the colonial times and titles are not digitally recorded. A very subjective estimate of the percentage of plots with problems of double attribution lies at 40%, according to staff of the municipal urban planning department, as opposed to the dispute percentage presented in the research report (6% in Tete and 7% in Maputo).

### Highlights of the discussion

- Can American-style community participation replace the strong socialist local relationship network? Shack/Slumdweller International (SDI) has managed to mobilise communities in every country in the region other than Mozambique and one of the key questions is how to enable community mobilisation to happen in a more meaningful way in this context.
- It is troubling that officials purposefully maintain and increase complexity to their own ends and perpetuate scarcity
- Inability to issue DUATs/titles leads to land economies remaining by and large informal.
- The descriptive v normative purposes of the continuum diagram arose again. A simple diagram might be suited for advocacy but it cannot do justice to the kind of complexity that the reports identify, on which Alain Durand Lasserre and Harris Selod expanded. In keeping with the recommendation to develop more information / knowledge tools to support continuum related research and assessment work, the idea of a 'Continuum Assessment Framework' was discussed.

### Group presentations and Reflections

Following the presentations of the research reports and respective responses, the EGM participants were asked to form three groups in order to reflect, discuss and agree on final conclusions. The main question was what could be learnt from the research reports on evidence of the continuum of land rights in Southern Africa. The specific guiding questions were:

- How does one look for the de jure and de facto evidence in country? What helps you? What did you observe about what this team has been doing?
- What have the researchers find in a sense that what do you have now that you didn't have before in order to grapple with the issue of the continuum?
- What are the implications of the findings for our in-country work and for in-country policy, law, institutional framework and implementation capacity? What did the findings say to us? What do they mean?



### *Group One presentation*

The group made many thought provoking remarks about the research findings and subsequent discussions. They noted that in order to collect the information on de jure and de facto tenures, it is important to know why the information is needed. This also determine to which sources one has (easy) access or not (e.g. a commercial company differs in this from a researcher).

Regarding the methodology, there is a need to engage at different levels – at national level with government officials, professionals, larger NGOs; at municipal/ local level with officials; and at community level with local people, not only with the community leaders but also with individuals. A question arose how large an alternative approach to tenure security needs to be in order to be included. The group felt that the fact that it is scalable is more important than its current size.

The group commended the research work. They noted that the alternative approaches to tenure along the continuum were well described and ‘ranked’, although more could be said about the success of each alternative, especially the longer term effect, particularly if scaled up. However this requires ‘functional indicators’ and work is already being done on this by GLTN.

An interesting observation was made about the continuum, that is could almost be seen as shorthand for “Dynamics and interactions in land delivery”. It was felt that the continuum concept needs to be dynamic and multidimensional. Additionally, issues like transferability, affordability and equitability, need attention for each alternative, in addition to security and legality.

The participants were reminded of the scale of land issues, drawing attention to the fact that there will be 350 million new urban dwellers in Sub-Saharan Africa in the next 20 years. The

existing systems are not handling the current situation and there is a serious concern about the future. Simple and locally controlled interventions are needed to achieve any change.

It is very clear that improving and/or simplifying existing formal land administration in Sub-Saharan Africa has nearly no good stories (the DUAT example is daunting). It seems the vested interests are too strong, and with the consistency in those in power even when ideology changes, this leaves little space for true administrative reform. Government officials and politicians, land professionals and perhaps commercial sector banks have key vested interests in such reforms.

Building up systems from the left side of the continuum might be more do-able than simplifying from the right side. The group presenter suggested a matrix with more involved actors on the right and fewer involved actors when moving to the left.

Lastly, the group commented on the resilience of people and on the need to offer people tenure options to choose from. Finally, more than tenure, let alone freehold, people need 'access to the city'.

#### *Group Two presentation*

The group agreed that if de jure rights are not supported by a working land information system, evidence is not discoverable. On the other hand, de facto rights are easier to discover because they are maintained in the community. Community leaders keep records and these rights exist in the collective memory.

Regarding the findings of the research, the first point was the significant conflict of laws – colonial received law, customary law, statutory law are all clashing with each other and they need to be aligned and harmonised. Another interesting finding was that the law needs to reflect the reality on the ground and that it is no good making laws that people do not understand or are not aware of. In addition, there are big clashes between state actors and local leaders around the implementation of land laws. In spite of this, the system somehow works on the ground and planners need to respond to what happens on the ground, in order to assist people in putting in services and dealing with issues. There also seem to be a process of land reform in all the five countries but it is incomplete. State actors seem to be tied to the law which is irrelevant to the people and the policy does not reflect the needs of the people in either of the countries. Therefore, local authorities, who are part of the community, should be spearheading the change.

In-country work should support governments and non-state institutions and intervention has to be done on sustainable basis. It is not sustainable supporting NGOs because they collapse as soon as the support is removed. The private sector and business are important. The group concluded that it is important to understand the dynamics and that people work for reward, therefore strengthening support to institutions needs to take this into account.

### *Group Three presentation*

The first question this group addressed was whether the continuum fits the de jure and de facto rights and agreement was that the processes in practice are more dynamic and complex than the simple model. It is a linear concept but the reality is not a linear. However, the model is also strong because it is simple and it can trigger conversations, making it a good starting point for discussions among policy makers and stakeholders in countries.

The group had a discussion whether the continuum model can start the discussions in Malawi, where most communities manage land themselves, through the hierarchy of the chiefs. They concluded that when there is no government leadership, smaller communities can do without the continuum model, but when a government starts planning registration country-wide then the model is useful to start the discussions. What the group learned from the research was that one could start with the simple model, and later use a more complex model.

The experts addressed the question whether the continuum model fits city growth requirements and agreed that that the model is reactive, while reality is ongoing and not waiting for models and discussions or processes. People come to the city and they settle, but ideally the planning should happen first which it does not. In addition, discussions on land rights cannot be held without discussions on many other related issues, such as land planning, social context and gender.

Finally, in regard to the implications on the in-country work, the group agreed that the support should provide for affordable land delivery, affordable and secure registration of all the different types of rights. Therefore, strong institutions and budgets are needed to implement this.





## Session 3: Learning, Implications and Recommendations

### Roundtable discussion: New insights, implications for participants for their own work and recommendations to GLTN

A roundtable discussion was facilitated by CheeHai Teo of the International Federation of Surveyors (FIG). The panel consisted of six experts: Anna Muller (Namibia Housing Action Group), Co Meijer (Dutch Kadaster), Jack Makau (SDI), Allan Cain (Development Workshop), Julian Baskin (Cities Alliance) and Clarissa Augustinus (GLTN Secretariat). The discussion explored the learning results of the expert group meeting. The participants were asked to reflect on what had shifted for them during the meeting, what it meant for their work, what they would do with it, what it meant for GLTN and what GLTN should do.

#### *What has shifted during the EGM?*

Most experts agreed that there is a considerable network of people talking about the similar issues and there is a crossover of membership, reinforcing the need to work together as partners. The understanding of the continuum in the 21<sup>st</sup> century context was strengthened for all participants. Many had used the model as an advocacy tool for many years, but there was a general agreement that it needs to be further enriched with research and deep thinking. The continuum is shifting from being an advocacy device to a technical tool itself, and there is a tension in this shift. While there has been a paradigm shift, many people globally still resist the concept. This could be due to a lack of knowledge and understanding and a suggestion was made to have training for GLTN partners on the continuum to enable them to better use it for advocacy. It was emphasised that the continuum is a living and dynamic model, and a very strong call was made by several experts that the model (in particular its diagrammatic representation) should move from being linear to something that better represents the dynamic process. Attention was also drawn to the existence of a continuum of boundaries and continuum of right holders/obligations and these three continuums used together could make a very good tool for policy makers. The existence of a wide diversity of land rights was confirmed and all experts agreed that the continuum model should be used in country level work and written into country partnership strategies.

#### *What does this mean for your work?*

In a world that is unstable in many respects, there is a strong need to find a way to give people tenure stability and a piece of paper must be part of that. Whether this is an individual paper or a community record is open for debate. In this round of discussion, the question of simplicity versus complexity was raised again and arguments were provided for both. If something is simple enough then it can be scaled up but on the other hand simplicity may not work in reality, as reality is complex. In addition, two important concerns were raised – about the nature of communities and about the formalisation of land rights. ‘Communities’ should not be seen as homogenous and those involved in this work should be asking the question whether the people with lowest rights are included or adequately

represented. Incorrectly applied the continuum concept could hamper understanding of community as diverse interests and one should be very careful with this. In regard to formalisation of rights, it is not enough to say that the work should be done on recognising and formalising a range of land rights, but they should be formalised from the view point of and to accommodate the interests of the urban poor. Security of tenure should also be linked with urban planning and dynamics of the land market and in current discussions these issues are not always well linked. A general agreement was that more progress must be made on the social function of registration.



*What will you do with this? And what does it mean for GLTN?*

Some of the main ideas that resonated in this last part of the roundtable discussion were about promoting access to land, understanding specific contexts and reality on the ground, and coordination. Practitioners are less concerned about how the continuum model is drawn and more concerned about effective use of it to achieve land rights as a basis for access to basic services and development. The continuum should have practical relevance, creating the space for access to government including local governments, and access to communities with appropriate resources and support. It is also important to find a way to embed the rights in the law. Lastly a call was made for strengthened donor coordination and support for implementation.

One of the concluding comments from the panel was that the diversity of thought about the continuum of land rights at the expert group meeting was a strength, and that convergence or consensus is not always necessary. Rather, it is important to keep the learning process alive as the environment is very dynamic and needs to be constantly reinterpreted. Advocacy is a long process but there is no luxury for just long term advocacy. People are looking for practical solutions with positive impact. There is enough insight into the concept for the work to be done on the ground. The robustness of the concept will depend on maintaining an on-going cycle of learning.

## Closing remarks

Clarissa Augustinus thanked the participants for attending the meeting and appreciated the rich content, all the discussions, reflections, suggestions and insights. She particularly thanked the project researchers for doing robust research, commended the facilitator for his facilitation of the meeting and use of an action learning perspective, which had made a real difference.

This meeting confirmed the GLTN as a platform for re-thinking the concepts and issues, and facilitating the making of a 'new history'. GLTN helps engage land champions and this is of great value.

She pointed out a window that currently exists, an opportunity for achieving a paradigm shift on land at scale at country level, but stressed that success is not guaranteed. She urged everyone to keep advancing this agenda.



## ANNEX A: Programme



### Programme Global Land Tool Network Expert Group Meeting Johannesburg, 9-11 October 2013

*"The Continuum of Land Rights: Reviewing the concept and investigating the evidence in selected sites in Southern Africa"*

<b>9 OCTOBER: Day 1, Session 1: Review of the Continuum of Land Rights</b>			
<b>Session participants: GLTN Secretariat, Project Reference Group, GLTN Partners, country case study participants, other experts</b>			
Facilitator: Jean du Plessis, Global Land Tool Network, UN-Habitat			
<b>Time</b>	<b>Topic / Activity</b>	<b>Roles</b>	<b>Tasks</b>
13h30 – 14h00	- Arrivals & registration		
14h00 – 14h30	- Welcome and opening remarks - Project background, agenda, introductions	Clarissa Augustinus (GLTN Secretariat) Jean du Plessis (GLTN Secretariat)	Workshop record: Isidora Merkicevic (GLTN Secretariat)
14h30 – 15h15	- Findings: Continuum of land rights conceptual review	Lauren Royston (Project Consultant, Urban LandMark) and Mark Napier (Urban LandMark)	Report circulated by Friday 4 <sup>th</sup> October Presentation slides
15h15 – 15h45	Coffee / Tea		
15h45 – 17h30	- Response (10 min) - Questions of clarification - Facilitated discussion	Respondent: Jaap Zevenbergen (University of Twente, project reference group)	Presentation slides

<b>10 OCTOBER: Day 2, Session 2: Evidence of the Continuum in Practice in Southern Africa</b>			
<b>Session participants: GLTN Secretariat, Project Reference Group, GLTN Partners, country case study participants, other experts</b>			
Facilitator: Jean du Plessis, Global Land Tool Network, UN-Habitat			
<b>Time</b>	<b>Topic / Activity</b>	<b>Roles</b>	<b>Tasks</b>
8h30 – 9h00	Arrival and coffee		Coffee arranged Equipment check
9h00-9h30	- Summary and reflections on day 1 - Preview of day 2	Teo CheeHai (FIG, member of project reference group)	Presentation slides
9h30 – 10h00	Findings: Southern Africa cases: legal review	Peter Rutsch (independent legal researcher)	Legal review draft report circulated by Friday 4 <sup>th</sup> October Presentation slides
10h00 – 10h45	Response (10 min) and brief discussion	Edesio Fernandes (IRGLUS - International Research Group on Law and Urban Space)	Presentation slides
10h45 – 11h15	- Findings: Review of the continuum in practice in three countries in Southern Africa: Angola, Namibia and South Africa	Lauren Royston	Continuum in practice draft report circulated by Friday 4 <sup>th</sup> October Presentation slides
11h15-11h30	Coffee / Tea		

<b>10 OCTOBER: Day 2, Session 2 (cont.)</b>			
<b>Session participants: GLTN Secretariat, Project Reference Group, GLTN Partners, country case study participants, other experts</b>			
Facilitator: Jean du Plessis, Global Land Tool Network, UN-Habitat			
<b>Time</b>	<b>Topic / Activity</b>	<b>Roles</b>	<b>Tasks</b>
11h30 – 12h00	Responses (20 min) and brief discussion	Alain Durand-Lasserve (CTFD - Comité technique foncier-Développement) and Harris Selod (World Bank)	Presentation slides
12h00 – 12h30	Malawi case study presentation : Review of the continuum in practice in Malawi	Cynthia Phiri, Urban Research Institute and Siku Nkhoma CCODE	Presentation slides - circulated by Friday 4 <sup>th</sup> October
12h30 – 13h00	Response (10 min) and brief discussion	Jack Makau, Shack/Slum Dwellers International	Presentation slides
13h00-14h00	Lunch		
14h00-14h30	Mozambique case study presentation: Review of the continuum in practice in Mozambique	Lauren Royston	Presentation slides - circulated by Friday 4 <sup>th</sup> October
14h30 – 15h00	Response (10 + 10 min min) and brief discussion	Els Keunen (GIZ) and Julian Baskin (Cities Alliance)	Presentation slides
15h00 – 16h15	- Explanation of process - Group work on key questions	Jean du Plessis All	
16h15-16h30	Coffee / Tea		
16h30 - 18h00	- Continuation of group work - Reports to plenary	All Group representatives	

<b>11 OCTOBER: Day 3, Session 3: Learning, Implications and Recommendations</b>			
<b>Session participants: GLTN Secretariat, Project Reference Group, GLTN Partners, other experts</b>			
Facilitator: Jean du Plessis, Global Land Tool Network, UN-Habitat			
<b>Time</b>	<b>Topic / Activity</b>	<b>Roles</b>	<b>Tasks</b>
8h00-8h30	Arrival and coffee		Coffee arranged Equipment check
8h30 – 9h00	- Summary and reflections on day 2 - Preview of day 3	Mark Napier, Urban LandMark Jean du Plessis	Presentation slides
9h00 – 11h00 (including tea at 10h30)	Learning – new insights, shifts Implications for participants for their own work and Implications / recommendations to GLTN	Roundtable discussion (with interaction from the floor) Moderator: Teo CheeHai	Panellists to be confirmed
11h00	<b>CLOSURE, Tea and farewell to participants</b>		

## ANNEX B: List of Participants

### List of participants, GLTN Expert Group Meeting Johannesburg 9-11 October 2013

Name	Email address	Organisation
1. Lauren Royston (South Africa)	<a href="mailto:lauren@devworks.co.za">lauren@devworks.co.za</a>	UN Habitat Consultant
2. Mark Napier (South Africa)	<a href="mailto:mnapier@csir.co.za">mnapier@csir.co.za</a>	Urban LandMark
3. Jaap Zevenbergen (The Netherlands)	<a href="mailto:j.a.zevenbergen@utwente.nl">j.a.zevenbergen@utwente.nl</a>	University of Twente
4. Teo CheeHai (Malaysia)	<a href="mailto:chteo.surveyor@gmail.com">chteo.surveyor@gmail.com</a>	International Federation of Surveyors (FIG)
5. Jean du Plessis (Kenya)	<a href="mailto:Jean.duplessis@unhabitat.org">Jean.duplessis@unhabitat.org</a>	GLTN Secretariat
6. Co Meijer (The Netherlands)	<a href="mailto:Co.Meijer@kadaster.nl">Co.Meijer@kadaster.nl</a>	The Netherlands Cadastre, Land Registry and Mapping Agency (Kadaster)
7. Alain Durand-Lasserre (France)	<a href="mailto:a.durand-lasserve@wanadoo.fr">a.durand-lasserve@wanadoo.fr</a>	Comité technique foncier-Développement (CTFD)
8. Harris Selod (USA)	<a href="mailto:hselod@worldbank.org">hselod@worldbank.org</a>	World Bank
9. Edesio Fernandes (United Kingdom)	<a href="mailto:edesiofernandes@compuserve.com">edesiofernandes@compuserve.com</a>	International Research Group on Law and Urban Space (IRGLUS)
10. Peter Rutsch (South Africa)	<a href="mailto:prutsch@icon.co.za">prutsch@icon.co.za</a>	Independent
11. Jack Makau (Kenya)	<a href="mailto:jackmakau@sINET.org">jackmakau@sINET.org</a>	Slum/Shack Dwellers International
12. Clarissa Augustinus (Kenya)	<a href="mailto:clarissa.augustinus@unhabitat.org">clarissa.augustinus@unhabitat.org</a>	GLTN Secretariat
13. Isidora Markicevic (Kenya)	<a href="mailto:Isidora.merkicevic@unhabitat.org">Isidora.merkicevic@unhabitat.org</a>	GLTN Secretariat
14. Anna Muller (Namibia)	<a href="mailto:amn hag@iway.na">amn hag@iway.na</a>	Namibia Housing Action Group
15. Allan Cain (Angola)	<a href="mailto:allan.devworks@angonet.org">allan.devworks@angonet.org</a> <a href="mailto:allan.cain@gmail.com">allan.cain@gmail.com</a>	Development Workshop
16. Els Keunen (Mozambique)	<a href="mailto:els.keunen@giz.de">els.keunen@giz.de</a>	GIZ
17. Siku Nkhoma (Malawi)	<a href="mailto:sikunkhoma@ccodemw.org">sikunkhoma@ccodemw.org</a>	The Centre for Community Organisation and Development (CCODE)
18. Cynthia Phiri (Malawi)	<a href="mailto:cynthiaphiri@ccodemw.org">cynthiaphiri@ccodemw.org</a>	Urban Research Institute
19. Taffy Adler and Karishma Busgeeth (South Africa)	<a href="mailto:taffy.adler@thehda.co.za">taffy.adler@thehda.co.za</a> <a href="mailto:karishma.busgeeth@thehda.co.za">karishma.busgeeth@thehda.co.za</a>	Housing Development Agency (HDA)
20. Julian Baskin (USA/Belgium)	<a href="mailto:jbaskin@CitiesAlliance.org">jbaskin@CitiesAlliance.org</a>	Cities Alliance