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

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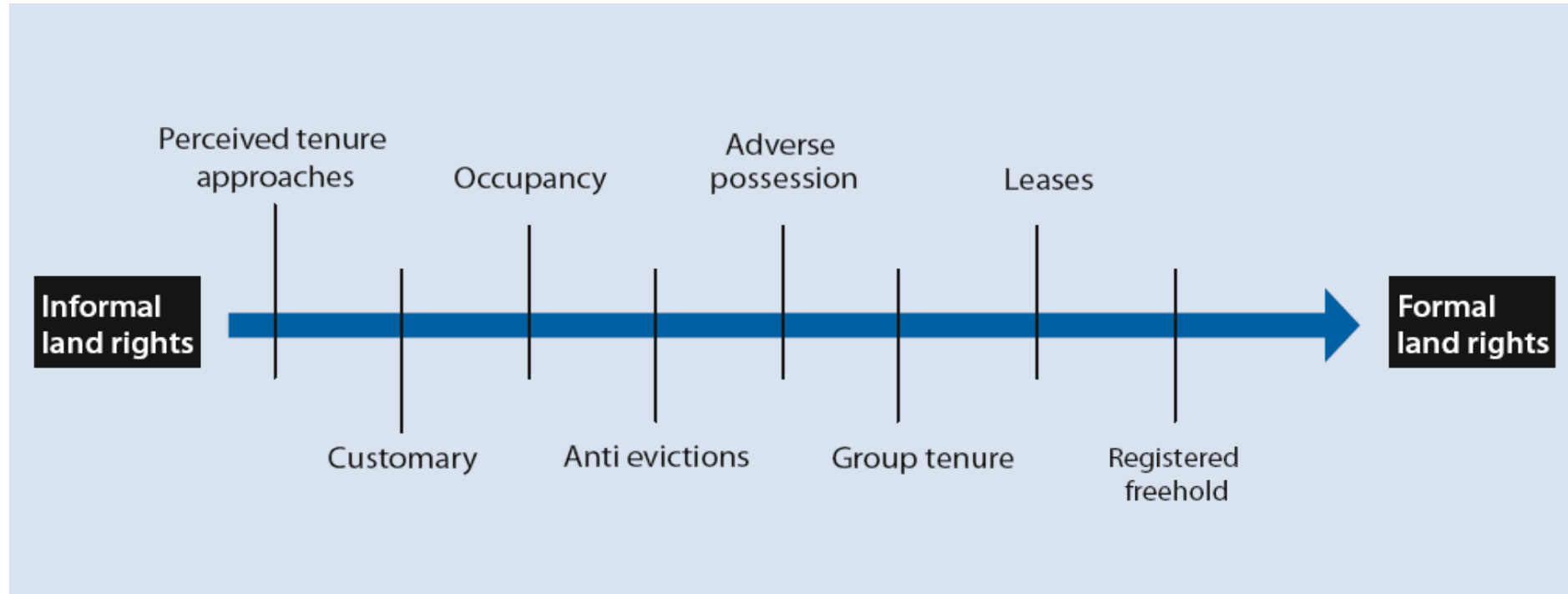
May 2016
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Introduction

- 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



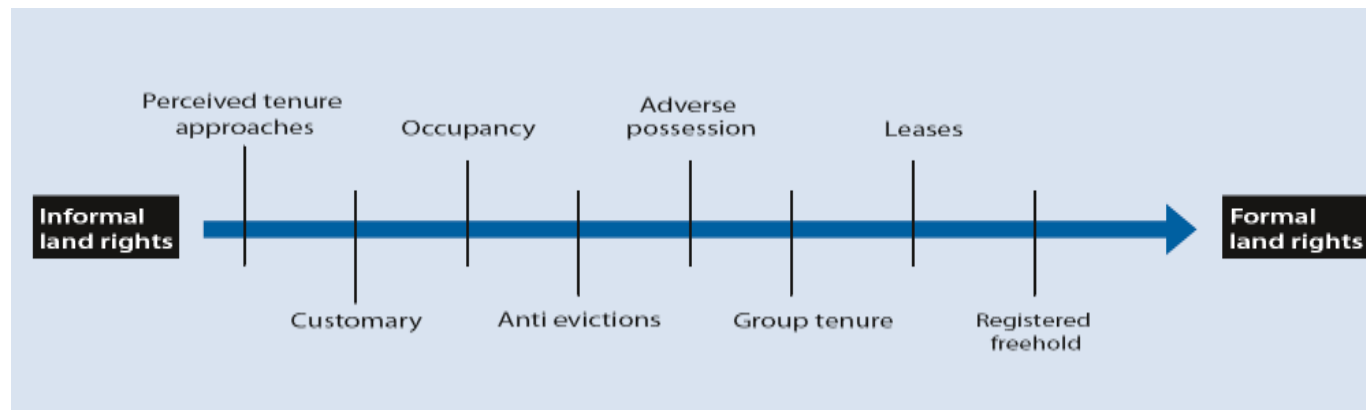
Old Continuum Model of Land Rights



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 \neq 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

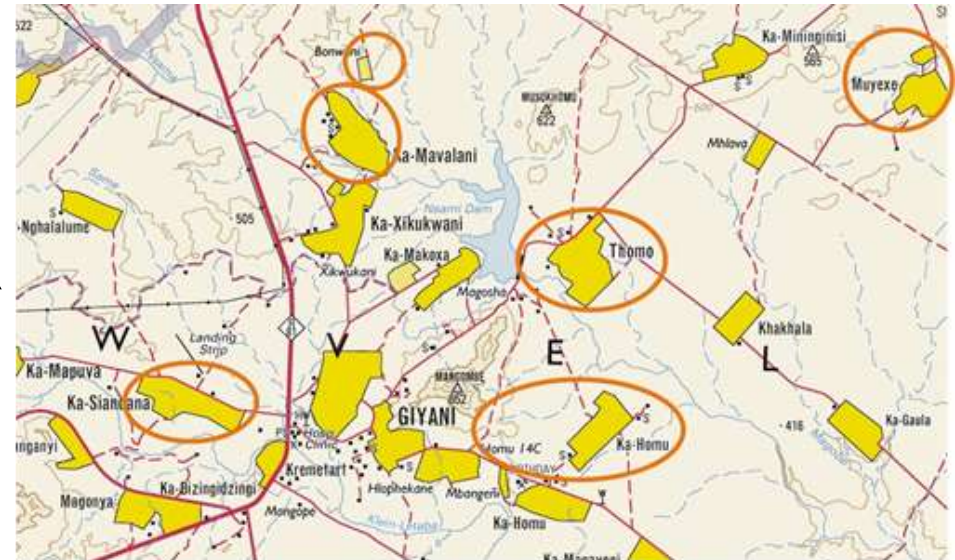
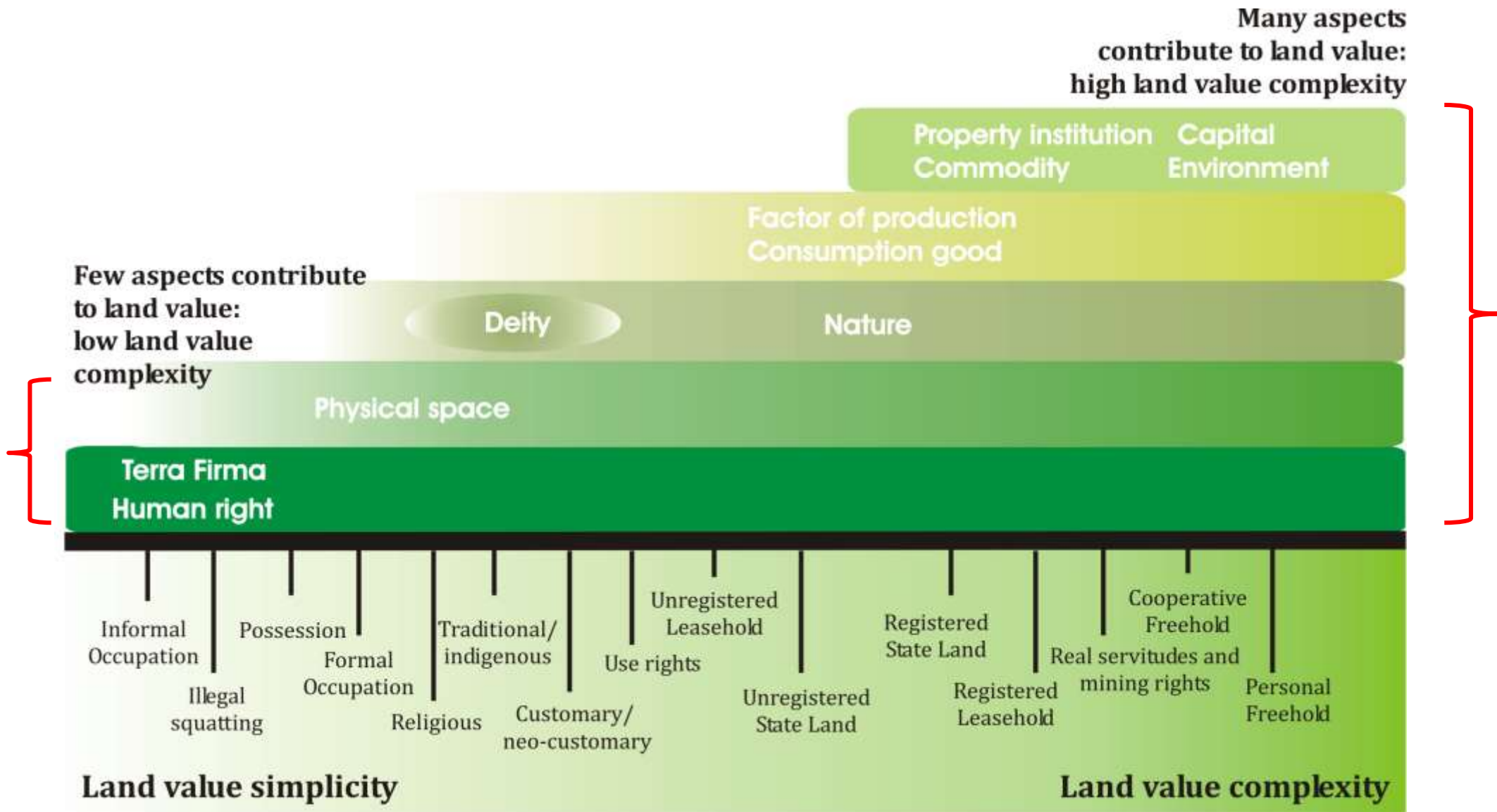
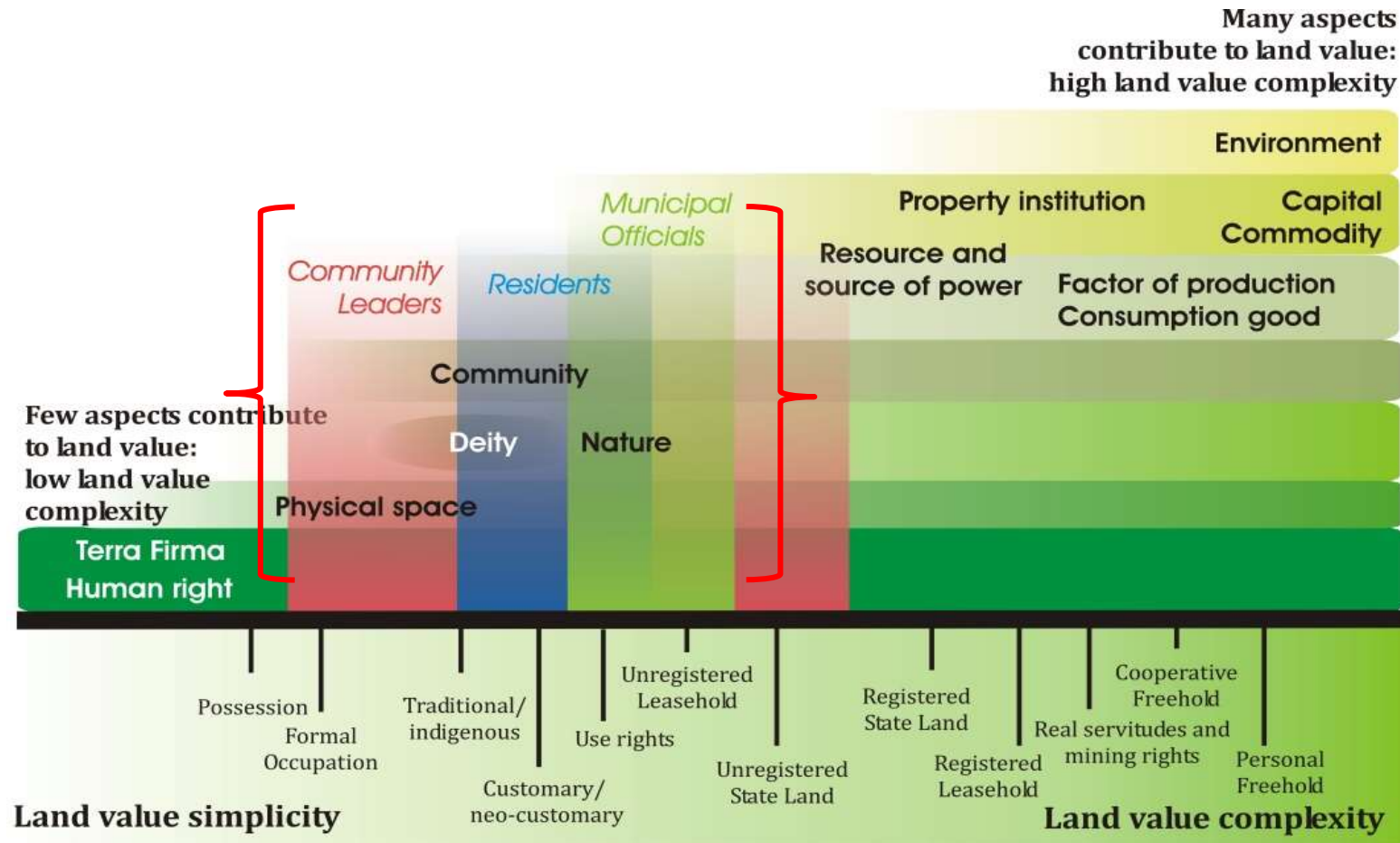


Figure 1: Giyani centre and location of towns where communal leaders and residents were interviewed.

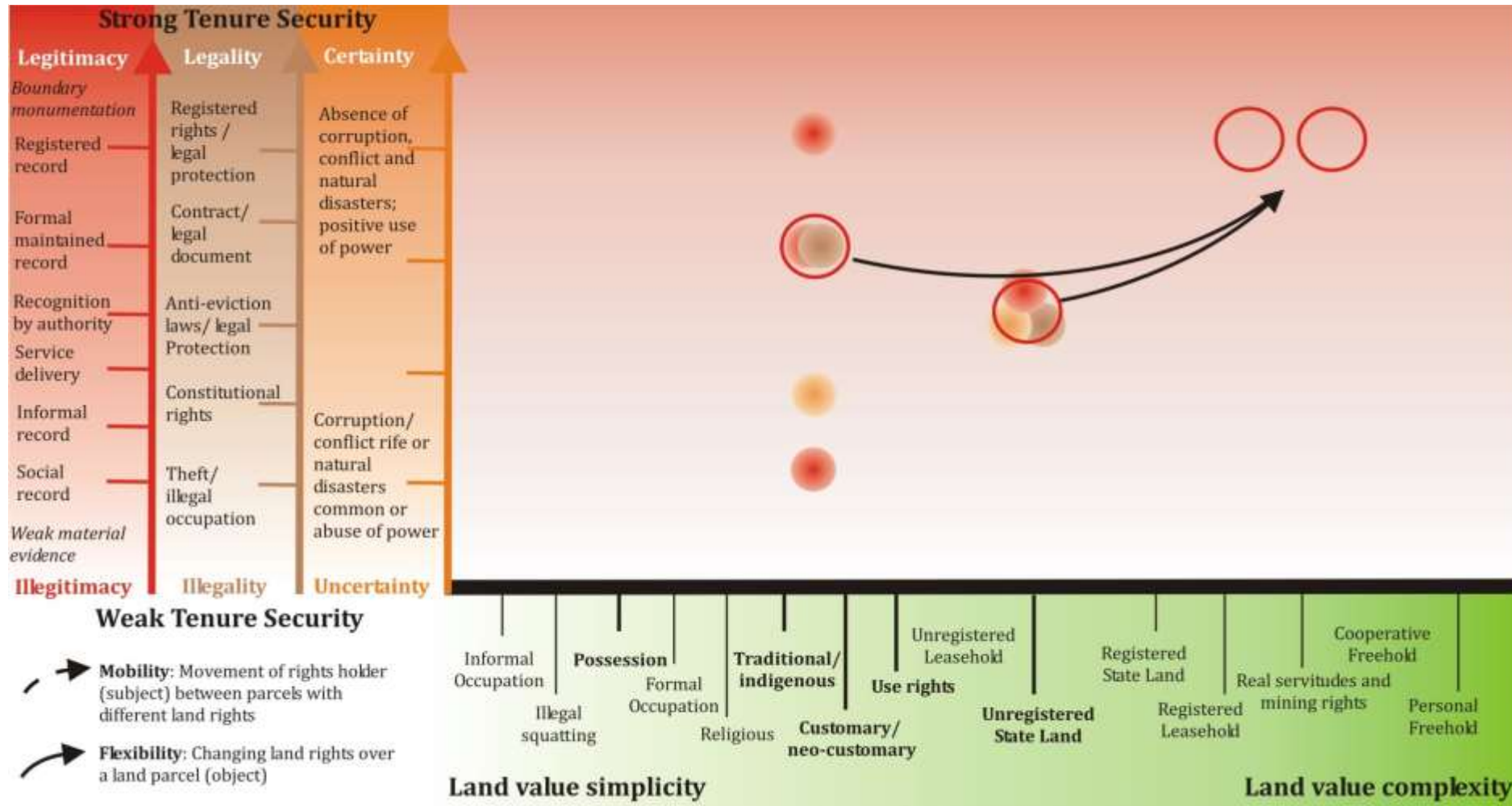


Modelling of land value in Giyani



Land value complexity and land rights types in Giyani with the three respondent types

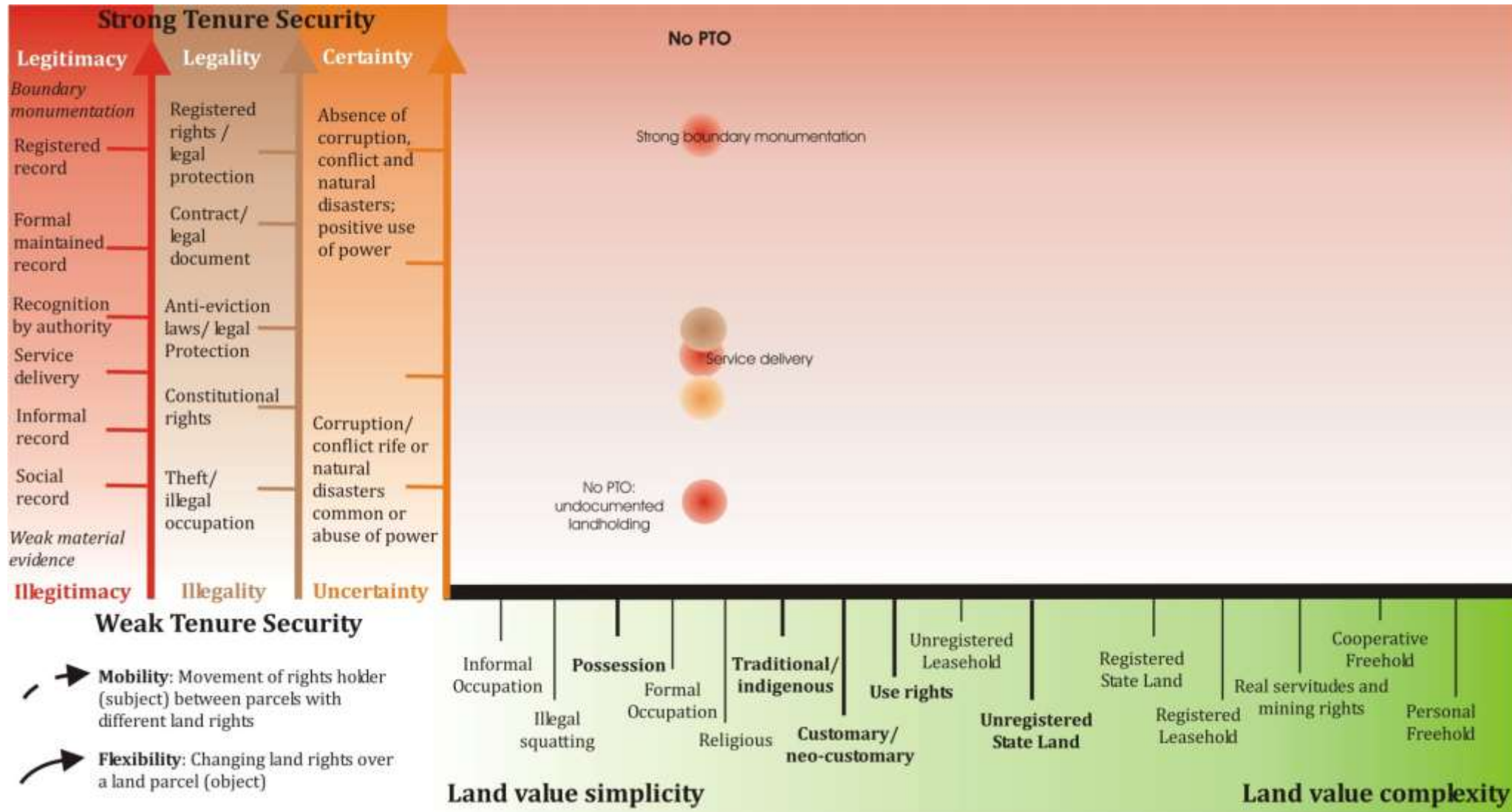
Generic new land rights continuum



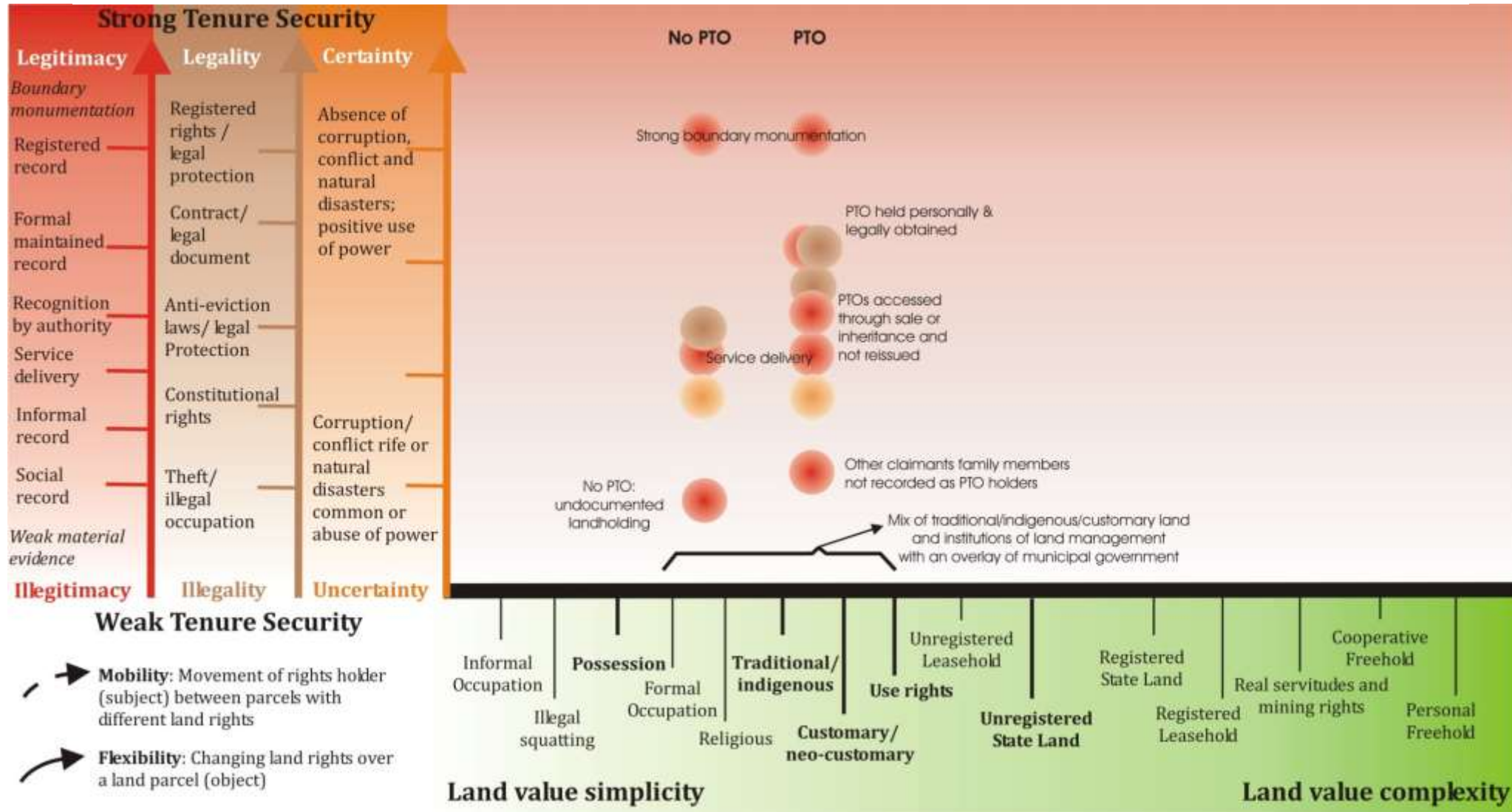
Neutral, accommodates diversity, no timeline, plurality of types, duality of subjects, flexibility and mobility, tenure security is modelled

See www.sajg.org.za

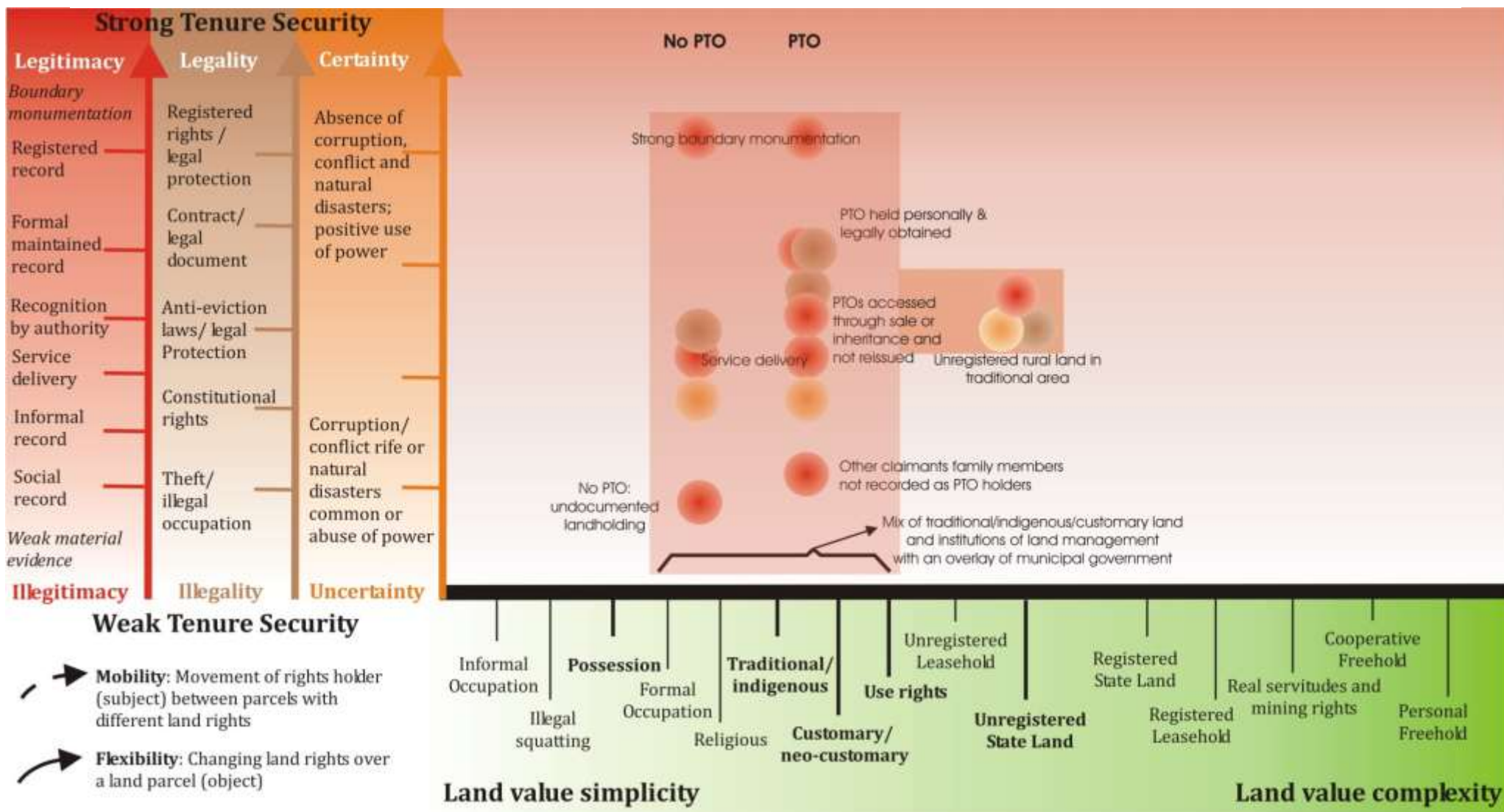
Using the model with Giyani data



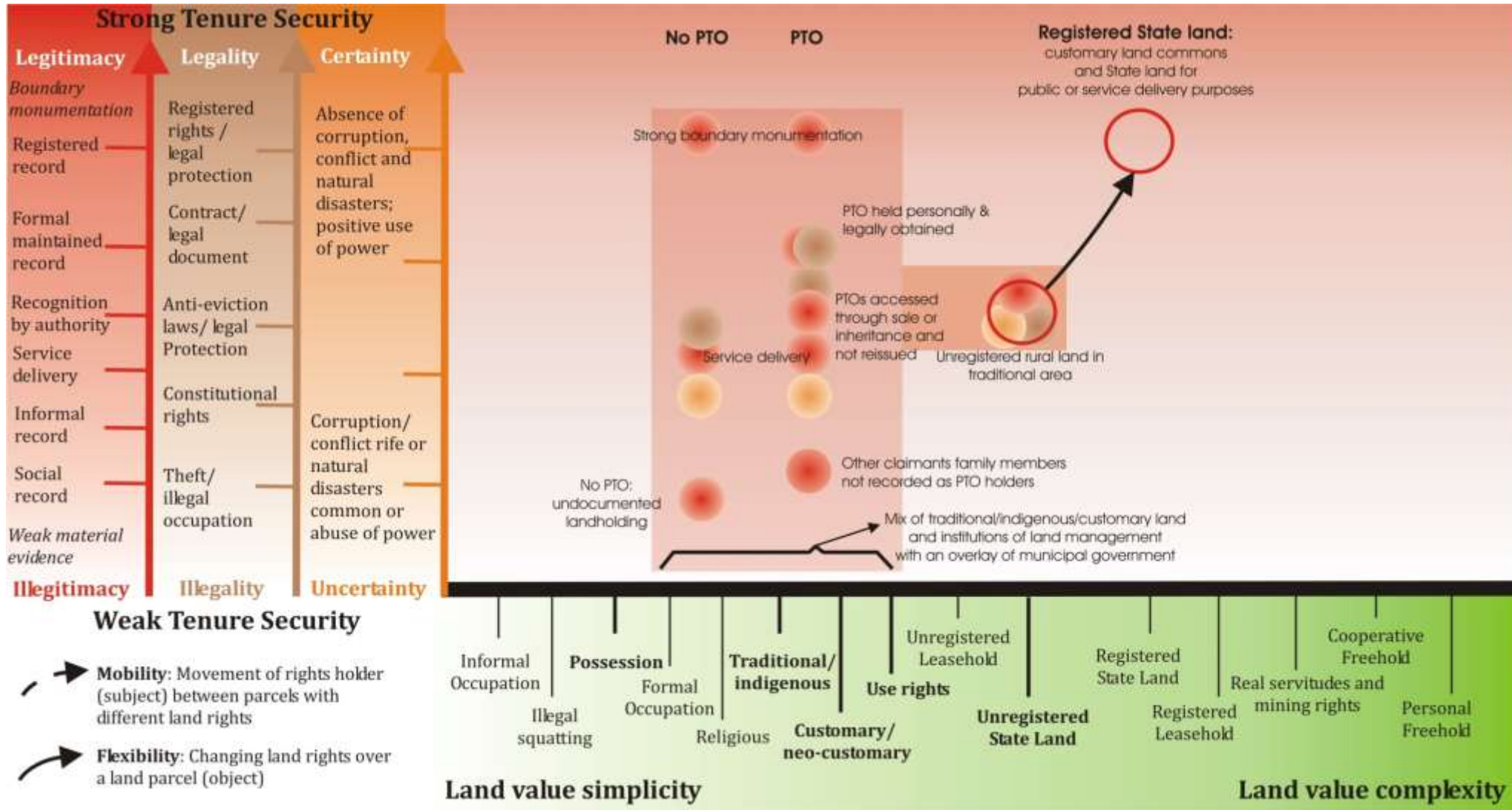
Using the model with Giyani data



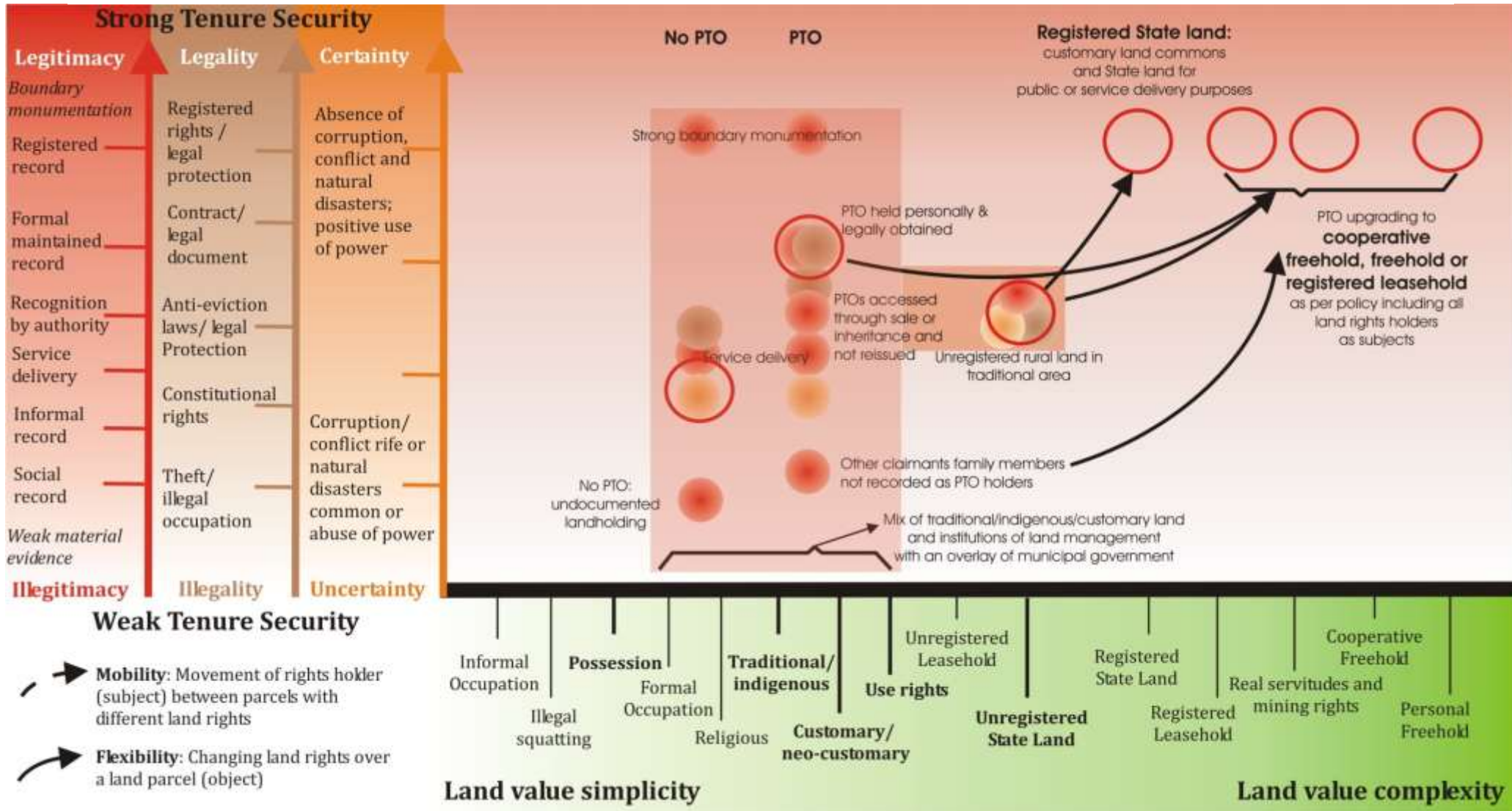
Using the model with Giyani data



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



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Information from data

SUBJECTS OF TENURE	EXAMPLES	ACCESS TO TENURE	TERMINATION OF TENURE
Individual	Mr Joe Blogs, Miss Nona <u>Dlamini</u>	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.	Death, bequest, gift, expropriation, prescription, sale, natural disaster, occupation/war/ dispossession (e.g. apartheid laws), lapse by merger or <u>usability</u> (servitudes).
Social collective –indigenous/ traditional group	Indigenous land claims	Social belonging, ethnicity, tribal affiliation, family lineage, inheritance of individually-held rights, occupation since time-immemorial, land restitution.	Social exclusion, death (in some societies ownership does not terminate on death).
Social collective – religious group	Mrs Parker	Inheritance, pre-emption, endowment/donation/gift, possession.	Religious exclusion, sale, death/bequest, gift.
Neo-customary communal group	<u>Protea Village</u> Land Claim group	Social belonging, lineage/ancestry, inheritance, occupation over a long time period, donation/gift, land restitution.	Social exclusion, death (in some societies ownership does not terminate on death), donation/gift, bequest, sale within rules of association.
Non-customary communal group	Shady Pines Sectional Title Scheme	Purchase, donation/gift, inheritance.	Sale, death/bequest, gift.
Legal (named) collective – juristic person	Scouts South Africa	Purchase, donation/gift /bequest, prescription/adverse possession.	Expropriation, prescription, sale, donation/gift, natural disaster, occupation/war/ dispossession (e.g. apartheid laws), lapse by merger or

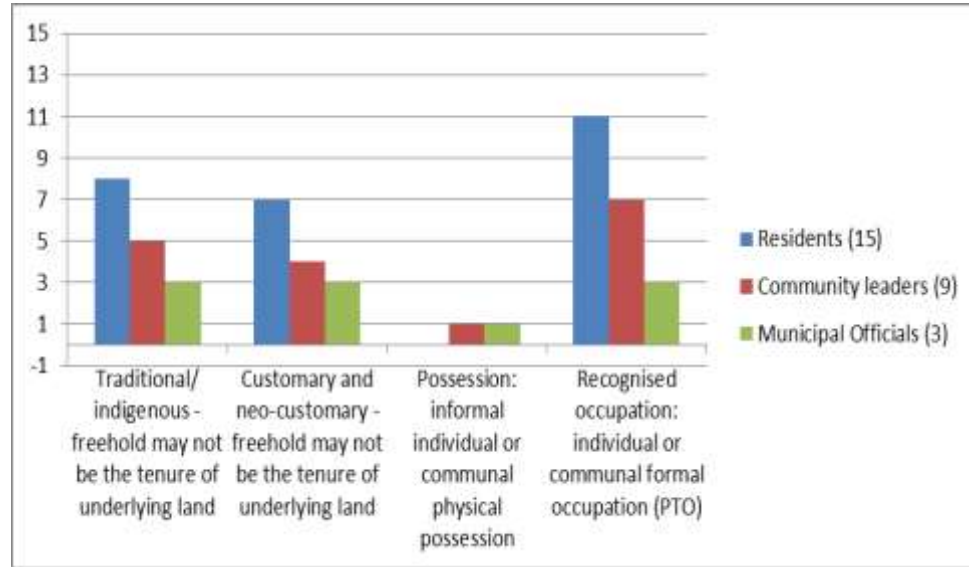
Family or household subject should be added

Information from data

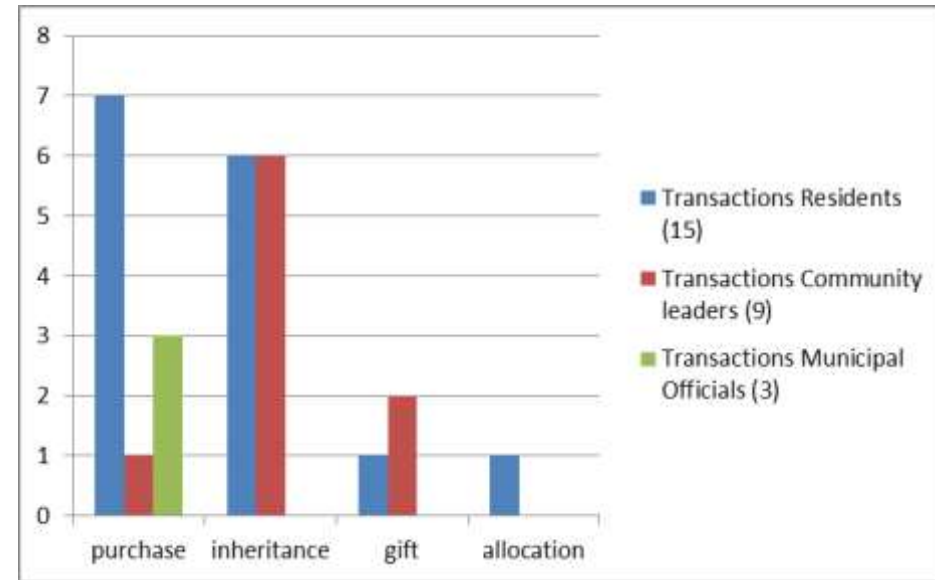
Concepts of land and its value to humankind	Subjects of Tenure and Tenure Transactions	Length of stay (yrs)		Transactions	Rights Evidence	Boundary evidence	Boundary evidence date	Land use control functioning well	Land development management	Livelihood	Equality and womens right to land	Can you sell?	Sell without gov & lawyers	inheri
		1	2											
6	1	1	16	purchase	3	2,3	1978	1	2	1	1	1	1,3	1
6	2	1	32	inherit	2	2,3	1979			5,7	2	3	1	1
3	1	1	17	purchase	3	2	n/a			5,6	2	2	2	1
6	1	1	23	inherit	3	3	1993	1	2	1	2	1	1	1
6	1	1	40	inherit	2	2,3	1980	1	2	1,5,7	2	2	2	1
3	1	1	22	gift	3	2,3	1991			5,6	2	1	1,3	1
3,6	1,2	1	1	29	inherit	2,3	1997			5,6	3	2	1	1
6	1	1	15	purchase	3	3	1991			3	2	2	2	1
6	1	1	24	inherit	2	3	n/a			3,6	2	2	2	1
6	2	1	49	land allocation	1	3	1964			5	2	2	2	1
2	1	1	2	gift	1	3	n/a	1	1	1	2	2	2	1
7	1	1		inherit	2	2,3	1970	1	1	1,5	2	2	2	1
3,6	1	1	10	purchase	3	1	n/a			3	2	1	2	1
2,6	1	1	18	purchase	3	2,3	n/a			3	3	1	2	1

Coding tables

Information from data



Land tenure types



Transactions, or how land rights are accessed