

The background image shows three traditional round huts with thatched roofs and white walls, situated in a rural setting. The huts are arranged in a row, with a paved path leading between them. In the background, there are green hills and a clear blue sky. A modern white building with a green roof is visible on the right side of the image.

# Revisiting the Formal and Informal land tenure divide

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# Perspective

- Colonial tenure experiments in the EC – various forms of titling historically. Freehold, quitrent, PTOs – mixed results
- Interventions - irreversible impact on customary systems. Yet “customary” practices permeate tenure systems in urban and rural contexts – in new and adaptive ways
- LEAP - Legal Entity Assessment Project. CPAs in KZN. concern is with land tenure security. Critiques conventional notion of tenure security as only safety – tenure as means to an end not end in itself, to open doors
- CONTINUUM of tenure from formal to informal - useful tool to examine land tenure – multi-dimensional not uni-linear
- Formal occurs within informal systems while re-informalisation or disregard for legal requirements of title can occur within the formal system. It is a back-forth movement; not a straight line from informal to formal

# TENURE SECURITY

**Tenure form in itself does not bring tenure security but the ability to enforce a socially and politically meaningful and socially legitimate tenure system regardless of what “type” of tenure it is**



# LEAP expanding research

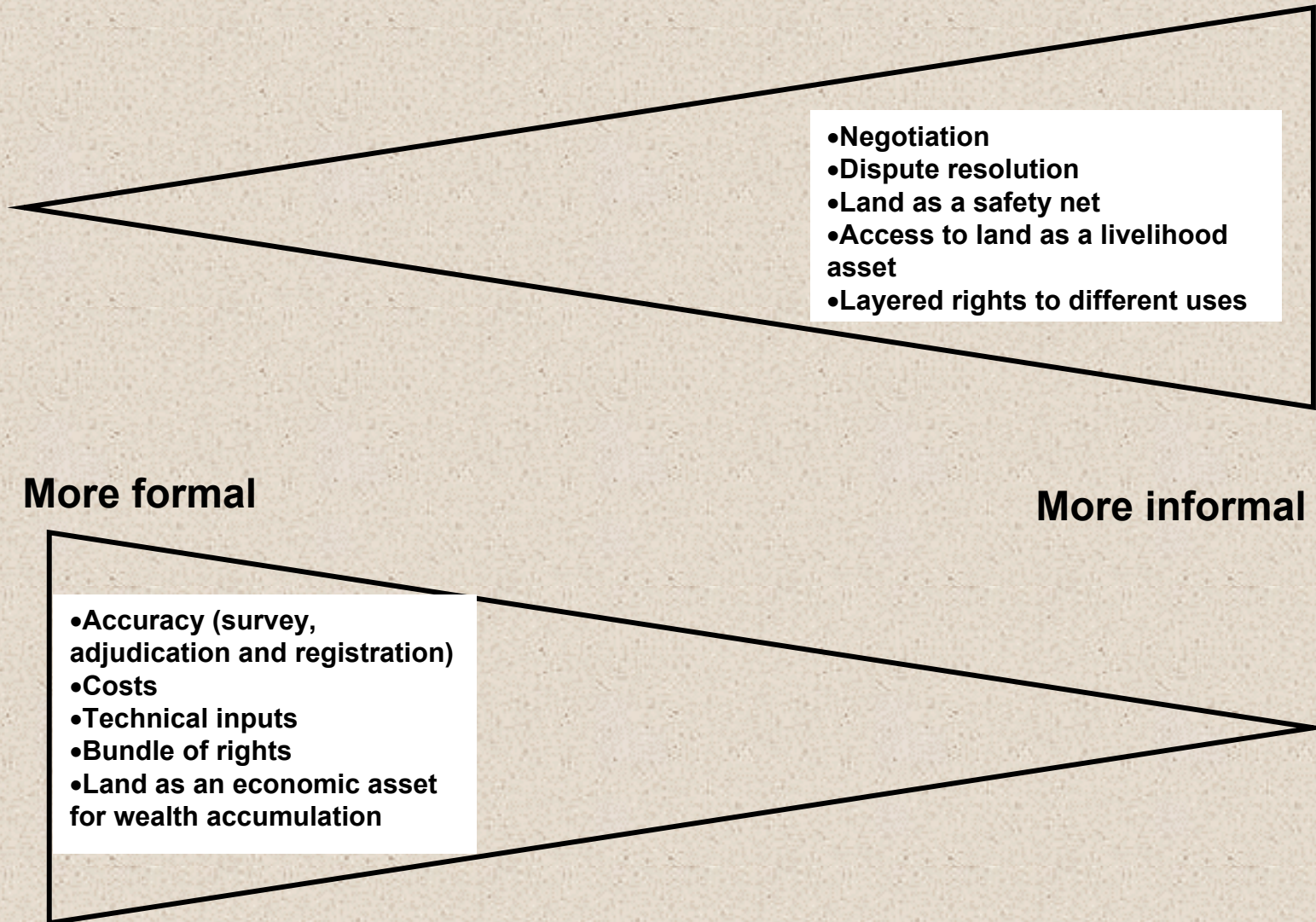
- LEAP - explore conceptual/structural anomalies from misleading bifurcation of “formal” versus “informal” land tenure systems – question polarisation
- New terminology needed, e.g. registered/off-register or officially recognised/officially unrecognised
- Explore tenure in wider framework than registration. Situate tenure within LAND MANAGEMENT (LM) - links with land administration (LA) and spatial planning and land use management (SPLUM). Explore alternative LM
- Explore land tenure in both rural and urban contexts – also to overcome conceptual divides between rural-urban
- Explore tenure in provinces and contexts outside KZN – including and beyond customary or communal ownership contexts in KZN. Looking for partnership with organisations

# Terminology of “Formal” and “Informal”

- The term informal suggests disorganised, chaotic, anarchic “other” but can be complex, well organised, regulated by sets of well understood rules and procedures, varies from place to place, context to context – HETEROGENEOUS
- Regulation tends to occur socially, through membership of a socially recognised group rather than by the State – not necessarily equitable and can be patron-client based – rights are layered and social networks are important
- The tenure situation could move from formal to informal if “formality” (i.e. officially recognised) does not render the desired benefits – i.e. formal may increase insecurity
- Widespread evidence of reversion to informal after formalities and transactions are completed. This is called “re-informalisation” or reversion to a more workable option



# LEAPs Continuum



# The Continuum continued

- The diagram shows tenure systems on a continuum in which the extreme ends are most appropriate for particular purposes
- Ownership in the form of registered title is highly technical and expensive but is most appropriate for property that is to be used as a base of capital accumulation.
- Communal forms (customary, hybrids, neo-customary) tenure on other hand require greater negotiation and dispute resolution but most appropriate for land used as base for livelihoods in a set of relationships that constitute social capital
- Gap is alternatives that enable people to move along the continuum and adapt as and when required, rather than to opt out of one system in order to enter another. Is bridging possible? Is there a “middle” way or are the two too different?



# Debates on titling

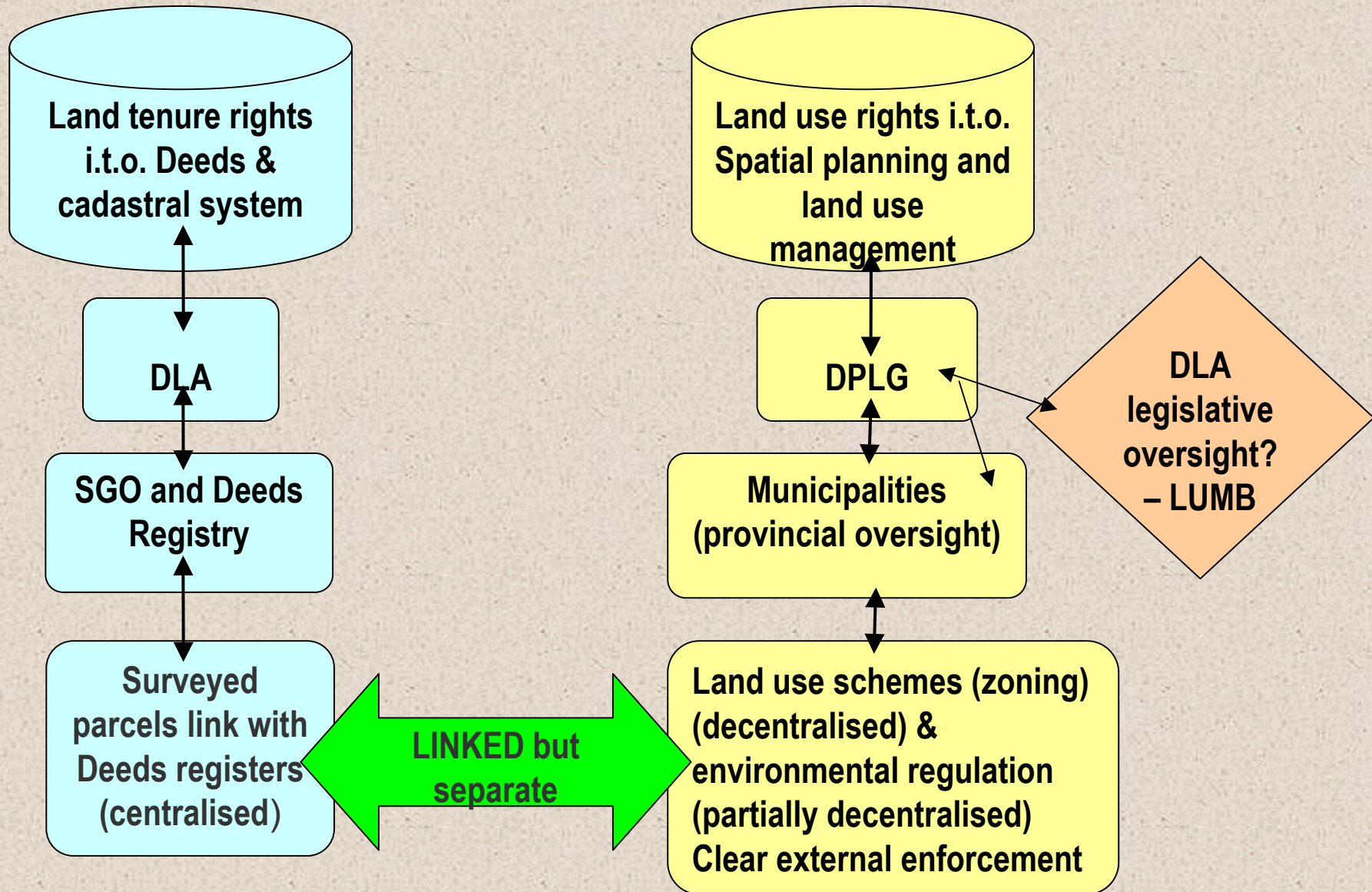
- Debates on pro- or anti-titling have been raging for most of the past century. Still not resolved.
- More and more recognition of the social values of land rights and complexity of off-register systems on the ground
- More recognition that formal property ownership may not be appropriate for all – big costs and potential debt burdens
- Formal system cannot engage with informal or emerging hybrid systems. Trend of InSys to formalisation but different pathways used, e.g. local witnessing – different forms of evidence to the ROD system used to authenticate tenure
- Does not seem currently to be an affordable sustainable set of tenure options for the poor. Current options may negatively affect livelihoods and development



# LAND MANAGEMENT

- Land Management is understood as the policy and strategic decision-making realm; Land Administration as the sets of activities that “actualise” the policies, laws, norms, plans, etc.
- In South Africa, the land management framework is structured around the formal sector. Government & private sector service specific components within a hierarchically structured system, e.g. surveying, conveyancing, registration, land use planning
- Land tenure policy and execution is highly centralised
- Spatial planning and land use management is decentralised
- The two articulate with each other via the cadastral system
- Land parcels are the main carriers of land information for both tenure confirmation and for land use management
- **Zoning** of land is the principle mechanism for managing land use. Zoning is not a description, it is a legal mechanism

# Regulation of tenure and land use: “Two streams”





# Cadastral Reform

- The cadastre in South Africa is the glue between the management of tenure via the ROD at **national level** and the management of land uses at the **local level**
- The cadastre is a form of land tenure literacy. Where no land parcels, the formal system cannot “read” the system
- Cadastres don’t easily adapt to systems where layering of rights – no single owner, different rights to different uses – socially determined – user rights linked to people not to parcels
- Some argue vs. cadastral systems (destroy integrity of customary) while other argue for an incrementalist approach
- Modify the cadastre by including both cadastral and non-cadastral information into land records – design a system can “read” the non-conventional systems – instead of trying to force the informal into the formal, adapt the formal to see the informal

# Decentralisation

- Decentralisation is key to more appropriate LM systems that can allow for more local nuance.
- “A hybrid combination of community and state regulation” – a normative approach – state sets up frameworks and delegates to local level.
- That would entail greater flexibility at the local level.
- It could for example involve land registers at the local (municipal) level and not national level Deeds Registry.
- Find ways of incorporating formal and informal into a land management framework e.g. alternative forms of evidence not just Deeds Registry e.g. electricity billing as evidence of address/land rights, range of spatial units not only co-ordinates, etc.



# UN - HABITAT ON URBAN TENURE

- “More focus on city-wide infrastructure development approaches to the regularisation of settlements with a focus on the creation of primary infrastructure networks such as water mains, road networks and sewerage systems instead of focusing on settlement-by-settlement upgrading with cadastral surveying that leads to titling..”

# Conclusion

- The formal system does not always work for the poor
- The informal, extra-legal, off-register or officially unrecognised systems (heterogeneous) often do work for the poor
- However there is disjuncture between the two – both need adaptation – explore gap between **policy** and **practice**
- For rights holders to access public and private services and to improve accessibility and equity, and asset bases, some form of regularisation is however necessary and inevitable.