

# PROPERTY RIGHTS FOR ALL SOUTH AFRICANS: AND THE ROLE THAT LAND REFORM CAN PLAY IN EXPANDING PROPERTY RIGHTS

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# Legacy (political, psychological and material)

- South Africa inherited a racialised and highly fragmented apartheid-era land administration framework.
- The system of land rights was hierarchical & racially dualistic.
- The Deeds Registry system, in its current formulation, does not and cannot work for 60% - 70% of population.
- Key cornerstones in the form of legislation (old order legislation) have remained on the statute books. Many of these laws are only applicable to ex-homelands, some are unenforceable; and some moribund. Almost all are modelled on outdated norms and mindsets.

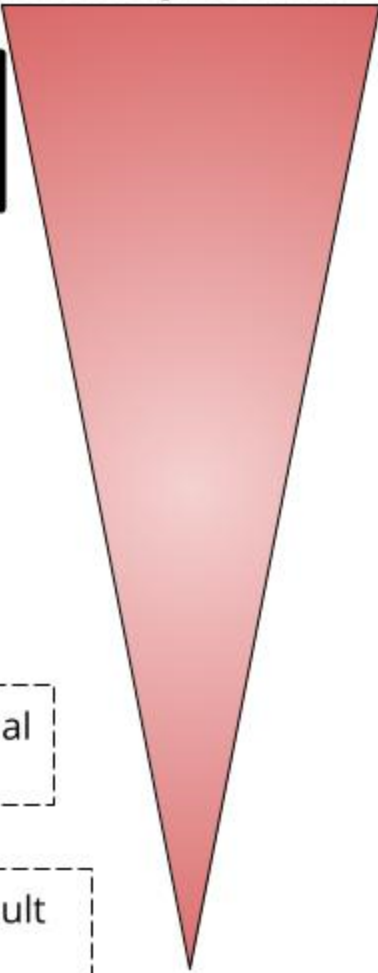
**Rights are strong and efficient because they are 'excessively' defined.**

Supremacy of 'ownership'. A world full of possibilities to own.

*Hierarchical civil law system is the underlying driver*

Rights associated with traditional authorities & statutory rights.

Impossibility of owning as a result of inequitable division of land.



Power, privilege & wealth

**Whites**

Land rights cannot support livelihoods - poverty & lack of infrastructure..

**Blacks**

**Rights are ill-defined, unrecognised and marginally protected property relations.**

# How far have we gone?

- Section 25(6) deals with tenure in the context of a new 'property' constitutional regime.
- 2 decades on parliament has not enact the legislation referred to in subsection 25(6).
- A suite of wide-ranging land tenure laws passed since 1991, providing preemptive measures to protect a range of vulnerable rights from arbitrary dispossession. Did these go far enough?....
- The approach was not to enact one all-embracing statute, but to enact a series of laws that categorise rights according to defined tenure contexts and relationships. A set of interrelated, but not overlapping, laws thus came into being to legitimate, protect and potentially protect rights according to the specific circumstances of each category.
- No systematic follow-up to the initial phase of extending protection.

Act 112  
ULTRA



1991

Act 111  
LTAA



1993

Act 22  
RLRA



1994

Act 67  
DFA



1995

New  
Constitution  
Act 3 LRLTA  
Act 28 CPA  
Act 31 JPILRA



1996

Act 62 ESTA  
Act 107 HA



1997

Act 36 NWA  
Act 19 PIE  
Act 107 NEMA



1998

Act 3 PAJA  
Act 32 MSA



2000

Act 28  
MPRDA



2002

Act 41  
TLGFA



2003

Act 17  
LRPVA



2004

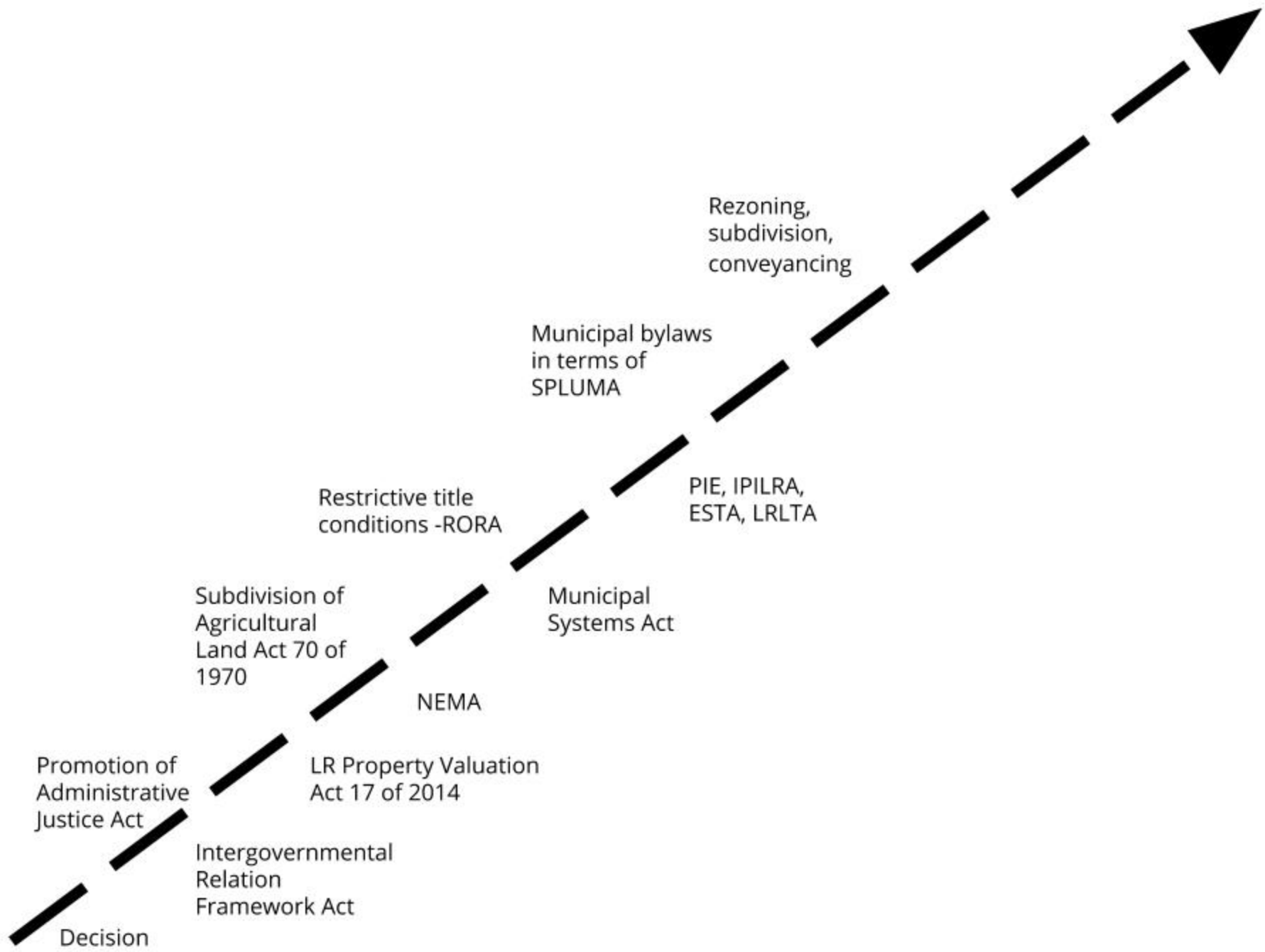
Act 16  
SPLUMA

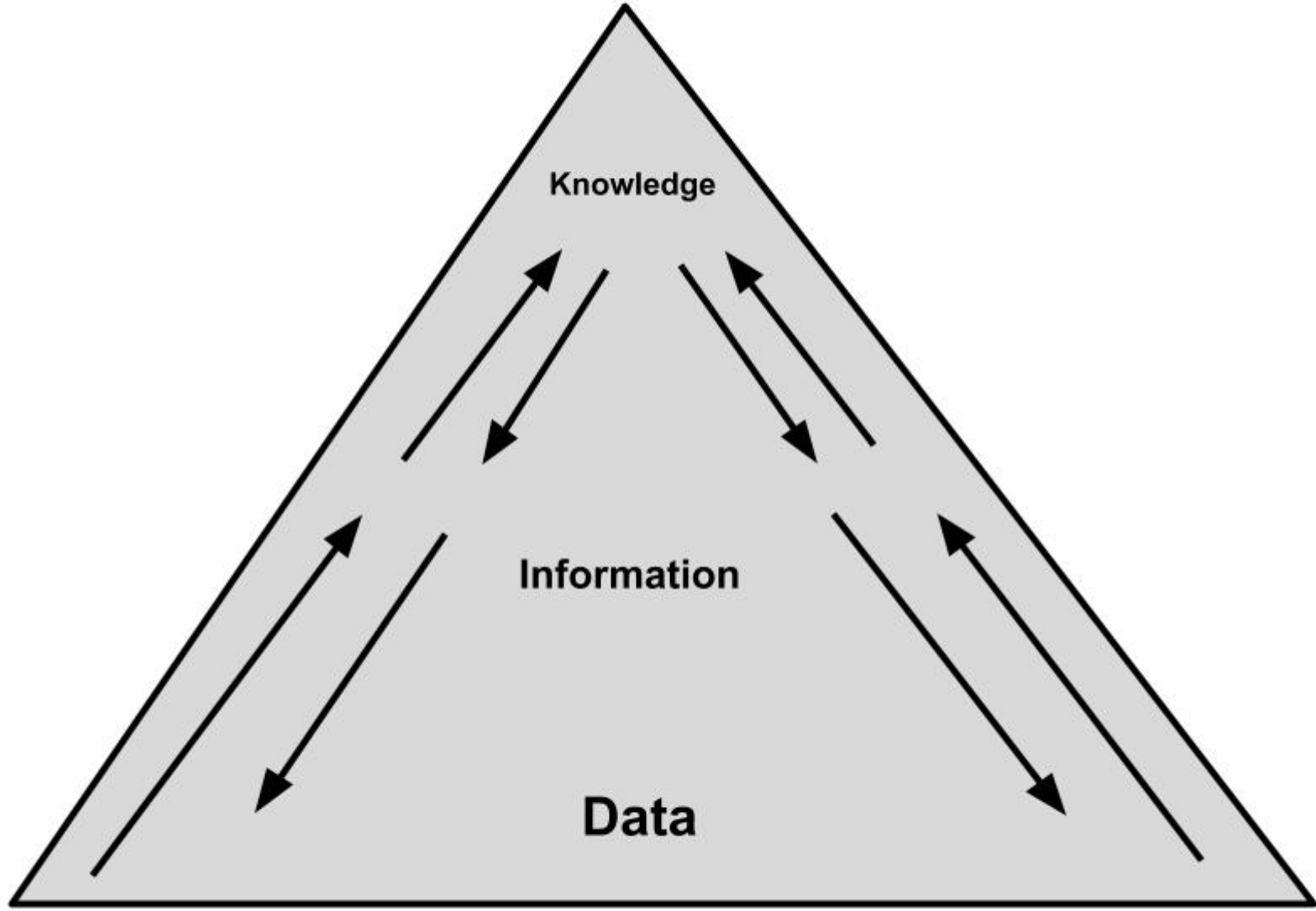


2014

# Proposal

- Land Records Act (mooted by the HLP)
  - Makes all kinds of rights visible and administrable.
- Land Administration Framework Act
  - Systematically remove old order legislation from statutes.
  - Establishes a single land administration framework.
  - Establishes a national land data infrastructure.



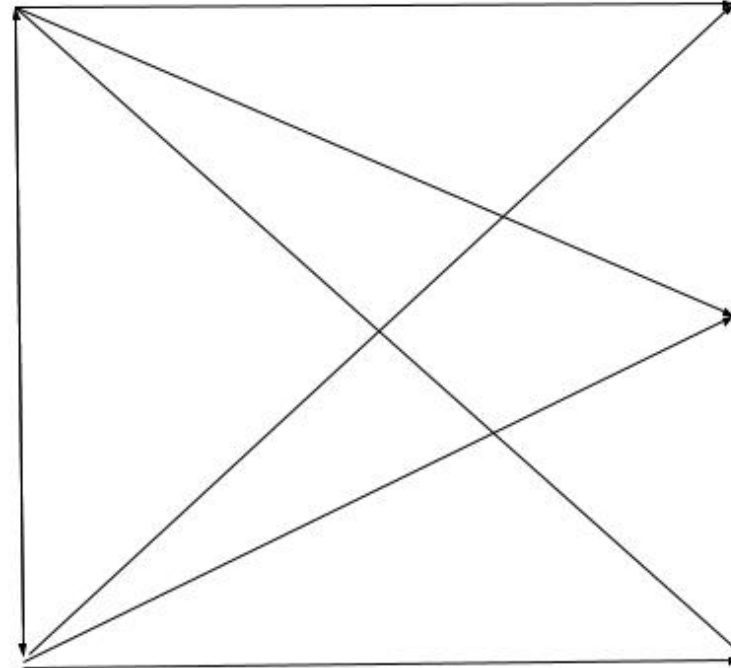




## Acquisition methods continuum

Compulsory acquisition

Willing buyer willing seller



## A sample continuum of tenure forms

State holds in title for own use.

State subdivides and transfers portions for housing and transfers public spaces to municipality.

State leases land to private individual or group (Company or CPA).