

Protecting women and children's land tenure for the future

Innovative data correlations for land institutions to protect the weak

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Key words: SDG's, Gender, Children, GIS, Justice

SUMMARY

The quality of data about family dependants captured in land information systems affects the Sustainable Development Goals for gender, equality and just institutions. Deeds registries were historically heavily informed by patriarchal values, with dependants' protection seen more as a privilege than a right. Titles are now registered in the names of women, but many registry processes remain contaminated by past world-views. A child or spouse's implicit right to housing and support from a land-owning guardian is a second class right if land can be sold free of this responsibility. This paper analyses the impact of invisible data on legal and land audit processes in three practical areas where the duty of support is affected, with references to the Land Administration Domain Model and the Social Tenure Domain Model. South Africa is used by way of example, but the concepts are pertinent for all geomatics professionals interested in strategic data-driven action. The first context analysed is formally registered state-subsidised housing, which constitutes a third of the titles for residential land in South Africa. Beneficiaries move to the top of the housing waiting list based on declarations about dependants, but much of this information is not brought forward into the electronic housing databases. The second discussion focusses on naming conventions for children in customary communities. This is compared with a Constitutional Court judgment about gendered naming practices at Home Affairs, and the new race and gender classifications required by the South African deeds registry in 2025. Lastly, religious land tenure is analysed against the backdrop of the eco-womanist perspective, which sees devaluation of women as an early warning for 'ecological sins'. Data about dependants of leaders in mainline churches is tested against a land rights continuum as a practical example of data gap outcomes. Three processes to mitigate the harm are conceptualised for deeds registry, customary and religious databases, with a call for more child-focussed ISO standards to build effective, accountable and inclusive land institutions.

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1. THE FUTURE WE WANT FOR OUR CHILDREN

The future we want is often birthed in unhappy histories we do not wish to repeat. The Sustainable Development Goals for gender, equality and justice offer a useful critique of institutions that once unashamedly protected the powerful at the expense of the powerless. All rights that human beings enjoy depend on responsibilities that we have for each other and for the Earth. Title deed registries represent the most fully-realised information system pertinent to the Earth. Many registries were birthed in times when patriarchal values believed that men, not title deeds, were responsible to protect women and children's land rights. The rights, restrictions and responsibilities recorded by land registries are inevitably linked to power relations that interact with socio-cultural norms. In 2025 South Africa evidenced its strong commitment to eradicate gender-based violence by formally designating it as a national disaster, thereby galvanising extra resources to tackle the crisis. This is therefore an opportune time to put a spotlight on existing measures to protect the land rights of dependants, who are usually women and children, and how to enhance them.

The concepts discussed below are relevant to countries wishing to prioritise equitable treatment for women and children. In South Africa the Domestic Violence Act [1998, 2021] can be implemented for protection in a wide range of contexts, from co-parenting, customary or religious relationships, to children, elders and those sharing a residence. Notably, the definition of domestic violence includes economic abuse which results from an unreasonable deprivation of economic resources, or disposal of financial resources without permission. Disposals of land in a manner which unreasonably deprives dependants of support should therefore be understood as constituting domestic violence. All record keeping systems devised when the protection of men's dependants was seen as a privilege rather than a right need to be assessed to see if they support gender-based violence. Before the digital era protections for dependants developed in a siloed way. Their personal data in population registers often remains invisible at key points (like a land deeds registry) where their rights could be pre-emptively protected. This data is important both for tenure security and for the State to audit social grants to see if family members can meet this responsibility. Land administration systems record data about the relationships between parties, spatial units and land use rights. Integrated systems are hugely relevant to the domestic sphere, and multi-purpose technologies increasingly share data across government departments. The geomatics profession can be a catalyst for strategic, data-driven action to shape global sustainable development in this arena.

2. THE DUTY OF CHILD AND SPOUSAL SUPPORT

The unhappy history of gender injustice when family relationships break down was succinctly stated in *Bannatyne v Bannatyne* [Constitutional Court of South Africa, 2003], which noted: mothers almost always become the parent giving shelter; divorced or separated mothers face the double disadvantage of being overburdened in terms of responsibilities and under-resourced in terms of means; fathers remain actively employed and generally become economically enriched. The Constitutional Court held that effective mechanisms for the enforcement of maintenance are essential for the achievement of the rights of children and the promotion of gender equality. This remains true today.

While laws differ between countries, the duty of support owed to dependants will be similar. Housing is included, as are basic needs such as food, education and medical care, or the means to provide them. On divorce the duties of support towards spouses and children are framed as maintenance claims. The duty to maintain is based on blood relationship, adoption, or parties being married to each other. A child must be supported by parents, whether married, living together, separated or divorced, including adoptive parents; and failing them by grandparents. The amount owed depends on the economic ability of the person owing support, and the corresponding need of the child or spouse owed support. The family member who claims support must be unable to sufficiently maintain themselves and the family member claimed from must be able to afford the claim. A maintenance claim must be reasonable and both parents must support their children proportionately, in accordance with their means. The duty to shelter dependants is not necessarily linked to a specific house, unless the family are still living in the matrimonial home. It may take the form of monetary compensation to pay for another home on divorce, or after the death of a breadwinner. Co-parents can apply to the courts to enforce divorce orders. Courts can also compel payment, garnish salaries and blacklist defaulters with credit bureaus to make it difficult to get credit.

The legal system is clearly intent on protecting maintenance rights, but the lack of a universal process at the deeds registry to flag dependants' rights can render them moot. In the past men held sole title even if married, and still do in many cases. The overlapping maintenance rights of dependants are inevitably more at risk in the poverty environment, and conflict between state housing beneficiaries and dependant partners, and inheritance disputes, are common. In recent years many more women have been given title or co-title to state-subsidised housing. Nevertheless, vulnerable family members are often unaware of their rights over such land, or how to enforce them. For example, attaching land so it can be sold in execution to cover maintenance arrears (or lodging an interdict to restrict disposal of a defaulter's land at the deeds registry) usually requires a separate court process. The state assists, but the requirements to achieve this can be onerous for some. Many dependants would not even be aware of the urgency to do so, despite land owned by a parent or spouse often being the most important asset upon which fulfilment of their maintenance and shelter rights hinge.

3. FORMAL DEEDS REGISTRIES AND DEPENDANT DATA

Most legal systems, cultures and religions see dependants as deserving protection. The South African deeds registry has processes for noting court orders based on maintenance rights, but not a broad-based mechanism to assist with enforcing them. In the absence of an interdict, individual title holders can potentially dispose of the proceeds of a land sale without considering dependants. This risks those dependant's implicit rights to housing and support from the title holder becoming second class rights. South Africa's state-subsidised housing makes a good study, as ownership of these properties has been transferred to beneficiaries by title deed. State-subsidised housing made up 32% of residential properties in South Africa during 2023. They totalled 2.18 million properties, with a backlog, which – if registered – could raise that figure considerably [Property Wheel, 2024]. This feat of land redistribution after democracy in 1994, much of which is urban, deserves more credit. Beneficiaries motivate applications for state housing with information about dependants. However, importantly, while this information is on housing waiting list databases, only information about co-owners is brought forward. The resulting absence of deeds registry flags warning about maintenance and inheritance rights must be considered. The invisibility of poor dependants in any deeds registry database that should underpin their rights shows a legal and social weakness. The Sustainable Development Goals for gender, equality, justice and strong institutions could be furthered by associating dependant's data more closely with land records.

3.1 CRITICALLY ANALYSING PROCESSES APPLYING TO MAINTENANCE

Land is transferred through multiple formal processes which feed data into a national land information system. This data is then a tool through which land rights can be protected. A pragmatic process to capture dependants' data in a deeds registry in a sustainable way is suggested below. Understanding the law as a series of processes which can either establish or undermine rights is not part of a legal practitioner's syllabus, as they are trained to apply the law as it stands. However, legal processes should also be analysed to assess whether the desired outcomes remain consistent when applied in different circumstances. The scientific method emphasises the importance of replicability in experiments to ensure reliability. The falsifiability rule (that a theory must be testable in a way that it can potentially be proven false) is one of science's foundational concepts. Laws need to be considered in this vein. Each process used to apply maintenance law in a deeds registry should be observed as an experiment to test the replicability and reliability of the process, across a variety of advantaged and disadvantaged contexts. Geomatics graduates with training that rests upon scientific methods will approach problems differently to lawyers. They are more likely to test whether a process can be falsified than just accept process-related problems. The core problem in land registries is not the absence of protective maintenance laws. It is that if the processes to enforce maintenance laws cannot be replicated with certain land transfers, the just intentions of these laws are not achieved. In short, the laws are falsified in that context.

The first step in any process aiming to give effect to a law is to ensure the data of all interested parties is visible. Data of women in unregistered customary or common law marriages, or partnerships – and children – is often invisible, or remains siloed in a separate institution, limiting its protective capacity. The lack of this data in registries seems to hark back to when only men got title deeds, with family rights at the discretion of the *paterfamilias*. The days when children born out of wedlock were seen as illegitimate and procreating priests faked celibacy, ignoring responsibilities with impunity, are long gone. Systemic gaps where data about the vulnerable is missing need to be critically evaluated.

3.2 GENDER, RACE AND DEPENDANT CLASSIFICATION

The first step when considering whether to include new data about dependants in a deeds registry is the legitimacy of classification processes. In 2025 South Africa promulgated a new regulation compelling citizens to declare their race and gender when buying and transferring property. At time of writing land transfers are rejected at the Deeds Office if buyers and sellers fail to classify themselves [Deeds Registry Act Regulations, 2025]. Form LLL defines the categories for race as: ‘Black African’, ‘Coloured’, ‘Indian’, ‘White’ or ‘Other (specify)’. The gender categories are: ‘Female’, ‘Male’ or ‘Other’. This new process and classification originated for land audit purposes, but its legitimacy has been hotly debated. Some see the race categorisation as a resurgence of racial classification similar to apartheid, with the absence of a verification mechanism and privacy protection called into question. The new gender categorisation ‘Other’ – which does not include ‘(specify)’ after ‘Other’ – offers a non-binary classification in keeping with South Africa’s human rights commitments. In a world in which migration and sexual identity are increasingly challenged we are likely to see calls for more race and gender data. South Africa has considerable experience of race issues, due to its unfortunate apartheid history. It will be worthwhile to follow debates here to see how these deeds registry classification issues are resolved. Unlike racial and gender classification, the classification of minor children is accepted. A child’s date of birth is readily available in their birth certificate, with age automatically indicating they fall into a class owed the duty of support. It is easy to adjudicate the existence of a child’s right to support either from an individual or from the state: ‘Who’ = a minor. ‘What right’ = the right to support. A right is understood to be a formal or informal entitlement to own, *to do something*, or to refrain from doing something. Dependant children’s overlapping land claims are neither currently registered nor registrable. However children’s data can be recorded in a deeds registry to provide other forms of protection. The situation of spouses, elders and others with a potential right to support is more complex, and cannot be discussed in a paper of this length.

3.3 CREATING A SIMPLE REGISTRY PROCESS TO PROTECT CHILDREN

The future we want is one in which dependants’ rights are flagged *before* land is sold by individuals, irrespective of a court order interdicting sales over a particular land parcel.

An automatic interdict prohibiting sale and transfer of land is not possible, as a dependant’s need (and their parent’s ability to meet it) is fluid. A general prohibitory interdict would not be

relevant in all instances, and would cause delays and cost in cases where it may not be appropriate. A potential maintenance claim is neither a right to title, nor a registrable use right. It is an overlapping claim to support and shelter which may not rest on the actual land parcel, but the proceeds of the land if sold. A pragmatic solution is suggested below to offer greater protection in a way that is not overly intrusive or burdensome, based upon processes commonly used when transferring land: namely affidavits, notices and caveats.

A property caveat (from the Latin ‘beware’) is a legal mechanism to provide notice of a legal claim to property. A deeds office caveat is a warning or restriction noted against a title deed that alerts others to a claim *or issue* that must be resolved before the land can be transferred. Caveats prevent transactions like sales or mortgaging land until specific conditions are met, to protect the rights of parties with a claim against the property. A dependant’s right to support is a legal claim. A formal obligation to do something – such as the duty to support a child – is a responsibility. Any formal or informal requirement to refrain from doing something – such as selling or mortgaging land – is a restriction. Restrictions do not necessarily have to prohibit the sale or mortgage of land, they can merely prohibit the sale or mortgage until a particular claim *or issue* is resolved. It is entirely unrealistic to expect unproven maintenance claims without court interdicts to be resolved at the point of land transfers. However, the requirement to notify interested parties with a potential claim (of a sale or mortgage) could be created in a caveat. Notification of interested parties such as co-parents, spouses and grantors of state subsidies would then be *the issue* to be addressed before the transaction could proceed. It would be too burdensome for transfers or mortgages to be delayed pending their consent – notification would have to be the only issue to resolve.

Caveats are lodged with the deeds office to note interests against a particular land parcel. A note is added to the file, which is visible to anyone doing a deeds office search of the land’s title deed. For transfer to proceed, a third party must be notified to ensure the underlying issue (in this case notification) is addressed, before the caveat can be removed. Caveats based on court interdicts do not represent all maintenance and inheritance disputes. Sustainable societies therefore need to explore a process for a dependants’ caveat over land that does not trigger a prohibition of transfer, but a requirement to notify interested parties. A deeds registry search to check for caveats over land about to be transferred is the first step a land conveyancer takes. Searches on the registry portals are cheap and open to the public. Laws to protect the personal information of children are stringent, so the search would merely warn: ‘Caveat: Dependant notification required’. Since the duty of support depends upon the economic position of a parent or spouse (not necessarily linked to a particular residential property) it is not viable to bar sales. Parents regularly avoid maintenance payments, so the value of such notification should not be underestimated, particularly in the pro-poor context of state housing. South African land conveyancers call for identity, marital and solvency details as soon as they are instructed, to prepare ‘status affidavits’ for the buyer and seller.

Affidavits are usually prepared by paralegals using automatically generated generic templates – as in-depth legal knowledge is not required – and sworn before a Commissioner of Oaths to ensure compliance with legal and regulatory requirements. It would be simple for software to

generate an extra ‘dependant affidavit’, to confirm the identity and birth date of dependants, and whether the land was purchased using a state grant. The buyer could prepare a dependant affidavit when taking transfer of ownership which could be lodged at the deeds registry to serve as the basis for the caveat to be recorded. Sellers selling land could also prepare an affidavit confirming the dependants they still have a duty to support, as this would change over time, and furnish the last known contact details of interested parties to be notified. A standard formal notice could also be generated for the conveyancer to send to interested parties warning of the disposal. Publication in government gazettes or newspapers lacks privacy, is unwieldy, expensive, and seldom read. Registered post, email and sms would be more realistic. This informality would result in some recipients not being reached, but this would be adequate to test the process. Access to the affidavit would only be given to accountable people, such as conveyancers doing transfers from deceased estates and family advocates. A national social services address could be notified for land acquired using a South African state grant when state consent is required before beneficiaries are permitted to sell. Ownership of millions of land parcels worldwide is subsidised upon the premise of dependants needing support. Data about the dependants of the owners is relevant for the state to assess and audit indigent grants applied for by such dependants, or by their care-givers.

3.4 NOTIFICATION FOR INTERDICTS AND CRIMINAL ACCOUNTABILITY

Effective enforcement of maintenance payments is necessary, not only to secure the rights of children, but also to uphold the dignity of women and promote the constitutional ideals of achieving substantive gender equality [Bannatyne 2003]. Transfer of ownership takes a few weeks or months. Disadvantaged sellers may be unaware of their responsibility to pay maintenance, meaning the affidavit process would have educational value. If conveyancers notify interested parties at the outset there would be enough time to approach a court for an urgent interdict prohibiting transfer, or mandating that the proceeds pay for maintenance arrears. Any failure to comply with a maintenance order is a criminal offence for which fines and jail sentences can be incurred. Dependants’ affidavits recorded at the deeds registry could be obtained via an additional access to information process, as proof of the land value (sale price) and the owner’s support duty. Parents and spouses lying in a sworn affidavit would commit the further offence of perjury. Parents meeting their responsibilities would have nothing to fear, as co-parents notified of the sale would not be able to obtain a court order, which would be necessary to bar the sale or to use the proceeds. A maintenance prosecutor indicated in a recent publication of the South African Law Society that the effective enforcement of maintenance laws can highly assist in protecting the best interests of the child, as well as promote the constitutional ideals of achieving substantive gender equality and upholding of the dignity of women [Ndaba 2022, s1 Constitution of South Africa 1996].

Our historical belief that only men’s data was important to protect land rights in a registry is not cured by including women as title holders. We must learn to ‘read’ in the margins and gaps to find where women and children’s data has been rendered invisible [Perez, 2019]. Past justifications that promoted the protection of men alone overlooked household power relations. By the time a recalcitrant parent’s instruction to transfer land reaches a conveyancer the enemy

is standing before the final fortress. Knowing dependants with rights exist depends on their data being accessible at the points at which legal gatekeepers guard against rights being lost. Conveyancers and registry personnel are the ones sitting in the seat of justice constituted by the formal land information system. They have to be the source of strength for their institution to turn back the battle at the gate. South Africa's Electronic Deeds Registration Systems Act [2019] provides for the Chief Registrar of Deeds to develop, establish and maintain the electronic deeds registration system by using information and communications technologies for the lodgement and storing of deeds and documents. Conveyancers could offer independent oversight for an interoperable system with automatic exchanges of birth, marriage and death data with the deeds registry. Strong controls for security, privacy and protection of personal information are critical for all housing records, and deeds registry record keeping is much more closely monitored than other databases.

4. CUSTOMARY AND GENDERED NAMING CULTURES

Formal justice institutions constituted by deeds registries use legal processes to secure land tenure, while extra-legal institutions use social norms to uphold their beliefs. Customary, religious and womanist norms need the support of the law to enforce moral behaviour, but the state also needs civil society to help protect vulnerable right-holders. Institutions that give moral guidance need to actively engage on family responsibilities. Traditional leaders and faith-based institutions may have more power than the state to meaningfully record data and protect family dependants in their own constituencies. The Social Tenure Domain Model (STDM) is a pro-poor, gender responsive, participatory functionality for documenting land rights developed by UN-Habitat's Global Land Tool Network (GLTN) to facilitate this. Social tenure relationships often depend on local tradition, culture, religion and behaviour, meaning that people-land relationships inevitably have to integrate formal, informal and customary land systems. In South Africa Roman Dutch law, English common law, customary laws and religious personal laws co-exist within a constitutional framework, making it fruitful to consider African customs in this context. In 2025 South Africa's Constitutional Court dealt with the constitutionality of the section of the Births and Deaths Registration Act [51 of 1992] which regulates the amendment of the forenames and surnames of South African citizens, after a husband was denied the right to hyphenate his surname to include the surname of his wife [Jordaan 2025]. Diala, an African legal pluralism specialist, claims that originally in African culture people referred to people as 'the child of' rather than emphasising parental surnames [Diala 2025]. Family relationships classified in this way would have data recordation consequences. Diala indicates that research shows gender flexibility in many African communities, with women retaining their birth names after marriage, and children able to take their mother's clan name.

Diala holds that arguments that the use of surnames underpins bloodlines should recognise that marital surnames are a colonial import, introduced for administrative purposes, and that use of them in Africa is merely reflective of normative co-existence. Diala also warns against marginalising traditional leaders and faith-based institutions, given the legal pluralism of a multicultural nation, and notes that the Congress of Traditional Leaders of South Africa condemned the judgment. It would be interesting to analyse how databases in traditional areas

record details of dependants, to see if they harness bottom-up information about dependants in a manner able to protect them more effectively. If customary communities referred to people as ‘the child of’ individuals, we should critically re-assess our top-down information systems prioritising one surname.

When the ConCourt assessed the socio-historical context of women assuming their husbands’ surnames it found differentiating between men and women serves no legitimate government purpose. It confirmed it unfairly discriminates against men in heterosexual marriages and recognised the ‘insidious’ impact of these limitations on women, noting it reinscribed patriarchal norms and denied them the right to have their surnames serve as the family name. The judgment affirms the rights of all spouses regardless of gender, and promotes diversity in family structures. It acknowledges that women may have strong cultural and familial ties to their surnames – ties that are integral to their identity and freedom of choice. The case did not address the insidious impact of children’s surnames being dissociated from their mother’s name should she revert to another surname. It would help to fulfil gender equity if spouses could apply for children’s names to revert back to parent’s birth surnames on divorce. Adult children applying for the parental surname they identify with (after the age of majority) could be considered. The proliferation of maternal and paternal surnames needs further thought. A child-centred approach to surnames could defuse gender and cultural conflict, as well as offer greater land tenure security for dependant women and children by making their data more visible. Professionals setting up databases and processes to record birth, marriage, divorce or death might learn from the approach to the family tree model of genealogical databases, as both parents are acknowledged. An online browse indicates Ancestry.com has over 30 billion records from all continents with privacy and security safeguards and software to encrypt personal information; the MyHeritage database has more than 9 billion records and offers free tools to create family trees. The duty to care for dependants aligns with customary and religious ethics, and genealogical databases often have faith-based roots.

5. FAITH-BASED INSTITUTIONS AND DEPENDANTS OF RELIGIOUS LEADERS

The theological concept of ‘ecological sin’ (seen as a sin against God and future generations) has emerged in the 21st Century [Bordoni 2025]. This sin manifests itself in the pollution and destruction of the environment, with eco-feminists warning that in male-dominated cultures the devaluation of women is a signifier for land devaluation [Nyantakyi-Frimpong 2019]. Biblical texts that use women’s bodies as metaphors for land or idolatry are increasingly problematised.

Contemporary readings try to ensure that interpretations promoting gender bias are removed, and the equal rights of women promoted [Kronfeld 2022]. Gendered and ecological land debates therefore converge in some religious contexts. The STDM aims to secure women’s land tenure through proper record keeping, with the emphasis on social tenure relationships, as understood in the continuum of land rights promoted by the GLTN and UN-HABITAT. Since social tenure relationships include those not supported by legal rules, the STDM aims to record all forms of land rights and rights holders, including religious ones, regardless of their formality.

It proceeds from the perspective that a party has a social tenure relationship with a land unit, supported by evidence-based source documents. The internal databases of faith-based institutions are therefore a potential resource for securing land tenure. Data can easily be exchanged between formal and informal systems using models accepted by the International Organisation of Standardisation. This allows for participatory land administration, as restrictions and responsibilities can be represented in a flexible way to document relationships. Faith-based institutions could therefore take the moral lead regarding dependant's tenure security by creating evidence-based source documents of dependant's housing rights that are capable of interacting with the formal legal system.

A suggested route for Christian churches follows by way of example, with the concepts capable of application by other faith traditions. The large Protestant churches are well-placed to test the STDM tools in the domestic sphere of clergymen with housing benefits. It is often customary to attach the use of a manse or vicarage (or pay a housing allowance) to the clergy, who are in most cases male. While the circle of women and children affected is small relative to the wider Christian community, the personal life of a pastor is seen as a moral touchstone for parishioners. This makes their domestic housing arrangements an important societal model for protecting dependants. Contemporary political ecology argues that the human struggle for resources is strongly influenced by how much power societies and individuals hold, and how they use it. Land tenure security is closely linked to the rights and discretions of those with the capacity to enforce the right to use and occupy land. Those with the power to enforce church housing rights are the organisation's hierarchy, who are mainly men. Clergywomen are not discussed, due to their rarity. Discretionary housing rights for women in scenarios where they are required to submit to male family authority raises the potential for gender discrimination.

Housing is usually discretionary for spouses, with clergymen considered the moral head of the home. Clergy dependant housing is therefore a relevant space to promote gender and child-based justice. Employment by a church or missionary society is *sui generis* (one of a kind) and was not always seen as contractual in the normal sense. As *Davies v Presbyterian Church of Wales* [1986] explains, a pastor: "does not devote his working life but his whole life to the church and his religion. His duties are defined not by contract but by conscience. He is the servant of God." A clergyman's wife can therefore be seen as married to a man who is employed by God, to explain God's perspective, on behalf of church authorities. There can be few more authoritative environments for women and children to live within.

Given that a clergyman devotes 'his whole life' to the church and his religion, the whole life of his family will be affected. A wife's contribution is often far in excess of other parishioners over an entire adult lifetime. The family may be encouraged to live 'by faith without income', prioritise theological education that is not income producing, live in areas where the wife cannot work, or earn minimally, with such faith-driven decisions leaving the family financially insecure, making housing critical. The right of a clergy wife to church housing still flows *iure exoris* (a right exercised by a husband on behalf of his wife) or from the religious institution. It is helpful to analyse wives' tenure by positioning them on a land tenure security continuum. The least secure is the street dweller and the most secure freehold ownership. There are great

variations in security within each category and many intersect. Occupant's security diminishes in tandem with the increase in discretions granted to enforcers of tenure rights. When the ambit of discretion is great, and enforceable occupier rights are absent, land tenure security functions as a patronage system. In the continuum below [Adapted from Whittal, 2014] the legitimacy, legality and certainty tests are applied to clergy dependants.

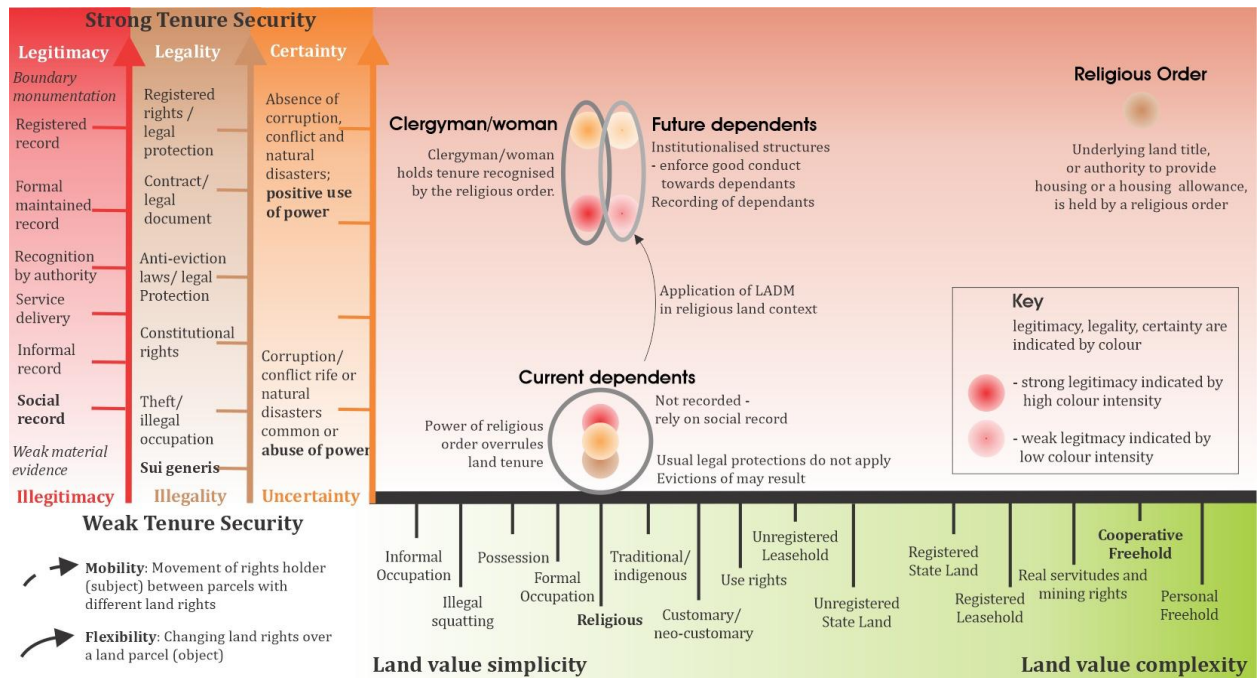


Figure 1: Compiled by Whittal J for this paper's analysis

THE LEGITIMACY TEST: Land tenure security is influenced by the formal written records upon which use and occupation rights usually rely. A deeds registry is the most formal, but many rights rely on other records. The legitimacy and accuracy of these records is a pre-requisite for security of tenure. Mainline churches do not usually maintain centralised records of clergy dependants such as dates of birth, baptism, dedication, confirmation, marriage or

divorce, or the churches and periods where they served, as churches do not see themselves as having a direct duty to support clergy dependants. There are records of widows under a pension fund, but records of divorced clergy wives are less likely. Knowledge of clergy wives, widows, divorcees and dependants would therefore be defined as a social record known to a relevant community, but not formally recorded. Since clergymen often change parishes even this community memory is limited. Importantly for legitimacy, it is not a commonly held belief within the community that clergy dependants have housing rights other than through the clergyman. The existence of clergy dependants with potential housing rights is therefore low on the legitimacy scale in the continuum, due to weak material evidence.

THE LEGALITY TEST: When housing rights are tied to a clergyman's post there is no contract confirming a wife or their children's right to be there. Church constitutions and founding statutes seldom mention responsibilities towards spouses and their children. Dependant's rights will be protected under family law, but this cannot assist with church housing or a future housing allowance once a wife is widowed or divorced. A wife is also in a *sui generis* position regarding anti-eviction laws and constitutional norms. Resistance to moving out is socially untenable and remaining against the will of the church would be illegal occupation. The core principles of natural justice are: the duty to hear the argument of the other side; the right to a fair hearing in all instances affecting rights; and no-one must be a judge in his own cause in the institution affording the hearing. Clergy wives are seldom represented as a class in the religious bodies that make housing decisions. Due processes to prioritise the housing interests of children before those of the clergy or the church are unlikely. Clergy dependants are therefore low on the legality scale on the continuum.

THE CERTAINTY TEST: Certainty depends on the absence of corruption, conflict and natural disaster. While the church is of huge benefit to society, there can be conflict between church leaders and parishioners and divorce is common in clergy families. On occasion members of the clergy behave in an aberrant fashion, with the dependants of paedophile clergy being amongst the most vulnerable. The positive exercise of ecclesiastical power can only be maintained during dark times if there are strong ecclesiastical institutions to force just conduct. When the legitimacy and legality of tenure are as low as they are for dependants with housing benefits, their tenure will be at risk from any abuse of power by a church hierarchy. On divorce it is the wife who loses her housing tenure and is expected to vacate church accommodation without due process, although there have been legal challenges to this. Housing for dependants of clergy with housing benefits is therefore low on the certainty scale.

Advocates of feminist political ecology and participatory geographic information systems are calling for more rigorous testing of claims of satisfying gender politics on the ground. The first step for a faith-based institution to assess the tenure security of its leaders' wives and children would be to create a database of source documents. Clergy dependant's rights and needs can then be balanced against those of parishioners and the institution. The first concern of any record keeping process is the authority of the person issuing a source document, its accuracy

and veracity, with proper privacy, storage, updating and cross-referencing. Most mainline churches have centralised administrators able to meet these standards who could collate information equivalent to the dependant status affidavit above, with periods and locations served. This could be a source document to notify churches previously connected to clergy dependants of support needs, at their or a later church's request. Dependant data would enable earlier parishes to assess the extent to which they still have a duty to offer housing or other support. It would also allow the institution to consider the justice of distributions from special collections and pension increases if marginalised spouses and children are ignored.

Representation for clergy wives, widows and former wives in institutional decision-making bodies – and participation in the dependant data recordation process – would ensure their true

needs are heard. It would also educate young wives forging ahead with risky financial lifestyles about the lack of institutional protection should their marriage or ministry go wrong. Religious leaders aim to take the moral lead on family life, and organisations that teach norms for family behaviour often obtain tax-benefits based on their public benefit activities. Domestic violence in South Africa now includes spiritual abuse, with the definition of this abuse now including manipulating someone's religious or spiritual beliefs to justify abusing them. Tax benefits could potentially be at risk if the institutional housing arrangements for leaders' dependants could be construed as within the ambit of economic abuse. Indirect forms of gender-based violence should be discouraged. If leaders promote a socio-economic domestic model that unreasonably deprives women and children of the economic resources needed for support its impact can be negative behaviour by those who trust them. Religious leaders already play an important role in society by promoting gender and youth responsive models for family life. They could further the Sustainable Development Goals by initiating databases about their own household, and use these databases as a model to educate adherents about the fundamental social problems caused when dependants are rendered invisible.

6. CONCLUSION: STANDARDS FOR MAINTENANCE CAVEATS

The International Organisation for Standardisation (ISO) is an international non-governmental organization that determines specifications for products, services and systems for quality and efficiency. Standards have made it possible to record geographic spaces serving multiple functions in the contexts of international, constitutional, administrative, private and customary law. The Land Administration Domain Model (LADM) is now available as an ISO endorsed data model to help organise information with an overlap of legal and spatial configuration, while the STDM standardises interactions between formal and informal records such as customary and religious databases. Rights to maintenance and support are more ubiquitous than rights to land, and are often easier to prove. In the upcoming era of digital transformation digital identity documents will be able to verify a wide range of personal information. Dependency is a principle that is easily generalised in legal and extra-legal contexts. The technical solutions explored in this paper should be capable of being standardised to safely connect dependant data with land. The Cape Town FIG Congress of 2026 has called for bold ideas to drive change:

A paradigm shift that prioritises dependants in land recordation could be considered. A gender-neutral code list of dependant types (including the elderly and those dependant on the state) could be compiled, with a list for the parties owing a duty of support. A standard for 'the right to notification of land disposals' could then be developed for the LADM and STDM, as part of the 2030 Global Development Agenda for a sustainable future.

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BIOGRAPHICAL NOTES

Leslie was a practising attorney, notary, conveyancer and mediator and later specialised in land information systems. As far as she is aware she is the only qualified conveyancer and notary in South Africa with interdisciplinary studies in Geomatics. She has consulted to local government on state-subsidised housing transfers, and lectured in social and family law (UNISA) and business law (UCT). She holds a BA LLB(Law), Hons(English), Centre for International and Comparative Labour and Social Security Law certificate, and an MPhil(Geomatics), awarded with distinction by UCT in 2015. Her article on social tenure based on intimacy was nominated best article of the month by FIG in July 2016. She has been affiliated both with the Cape Law Society and the South African Geomatics Institute.

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