

**Valuation of unregistered land – a practice manual**

**UN Habitat Global Land Tool Network 2021**

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## **ACKNOWLEDGEMENTS**

This manual has been prepared on behalf on UN Habitat – GLTN as part of the GLTN Professional Cluster initiative. The Global Land Tool Network (GLTN) is dynamic and multisectoral alliance of international partners committed to increasing access to land and tenure security for all, with a particular focus on the poor, women and youth. The Network's partners include international rural and urban civil society organizations, research and training institutions, bilateral and multilateral organizations, and international professional bodies.

The Professional cluster has been involved in three different activities within the GLTN agenda; Urban Rural Land Linkages, Valuation of Unregistered Land and Arab Land Initiatives. The GLTN strategic plan 2018 – 2030 (phase 3 2018 – 2023) <https://gltm.net/gltm-phase-3/>

This cluster initiative was initially developed and led by FIG Commission 9 (valuation), RICS and IVSC. After an initial scoping exercise and online masterclass/debate with international agency, government agency, private practice, academia, NGOs (non-governmental organisations) and professional institutions experts from valuation, social and economic geography, anthropology, social justice, economics, land management, surveying, taxation, law – an expert editorial group was formed by FIG Commission 9 (Valuation), RICS and IVSC (International Valuation Standards Council).

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## **SCOPE**

This document is an operational manual for the valuation of unregistered land. It is designed to put into practice the previous UN GLTN policy guide 'valuation of unregistered land', in combination with and influenced by global valuation standards (IVSC).

The manual is split into two sections, the first outlines valuation recommendations for valuing unregistered land and the second adds more detail on issues to consider when working in this complex environment. Appendices provide a template for valuing unregistered land, case studies, references and definitions.

The manual is designed to be globally applicable, particularly in developing nations where access to market data may be poor and where there may be a lack of trained valuers.

## GLOSSARY OF IMPORTANT TERMS

The following are common usage concepts for unregistered land rights, valuation issues and land based financing, the expert group also commends the taxonomy concepts of LandVoc

<https://landportal.org/taxonomy/term/7456>

The term '**Land**' is used to describe an area of ground used for agriculture to grow food, for construction to create shelter and for resources extraction. As a resource land is unique as it is immovable, yet its nature, quality and use are extremely versatile. It forms the basis for all development and is the primary source for a plethora of other vital resources crucial for human survival and growth. In the context of the built environment, land represents both the beginning and the end of the sectoral life cycle.

**Land Tenure:** The rules and arrangements connected with owning specified interests in the land. This can be defined as the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land and associated natural resources (water, trees, minerals, wildlife, etc.). Rules of tenure define how property rights in land are to be allocated within societies. Land tenure systems determine who can use what resources for how long and under what conditions. Land use can also be used to signify an existing land use separate from its formal designation.

**Land Administration:** The process of determining, recording and disseminating information about ownership, value and use of land and its associated resources. These processes include the determination (sometimes called 'adjudication') of land rights and other attributes, surveying and describing these, their detailed documentation, and the provision of relevant information for supporting land markets. In some countries the terms Land Administration, Land Governance and Land Management are sometimes used interchangeably.

### **State land**

It may be possible to estimate the market value of state-owned land using conventional valuation approaches. However, there may be circumstances where customary or informal use of state land means that socio-cultural and environmental values may need to be considered alongside any market value. In such cases, values juries and other broader public consultation protocols could help determine these non-market values.

### **Communal land**

The valuation of communal land may require consideration of non-market value, particularly concerning identity construction (identifying as geographically based community members, often inclusive of one's extended family). When real property markets emerge on communal lands, they often do so by means of leases granted by the community. The value of communal land may be determined by capitalizing the sustainable income that can be drawn from it, or by comparing to the value of a similar lifestyle and income from registered land.

### **Rangelands (pasture)**

The capitalization of projected net income from such land may not adequately reflect value. Such a pure economic approach can miss other forms of value that may be derived from the land. A sales comparison approach may be more reliable, and if the market uses heuristics such as beast area values (which can enfold the agro-ecological potential of the land too), then the valuer can apply them too.

**Customary tenure**

Individual parcels under customary tenure are held on the basis of the social cohesion and bonds between community and/or family, which in turn owns the land. Hence though the valuation can be done by traditional valuation methods, since the individual right is not a complete ownership right, the customary ownership rights of the community needs further consideration, with respect to the balance of the rights between the individual and the community. There are many variations of land held under group customary rights, including variations in formal systems. In the main, there are established protocols for valuations of this kind, and market precedents available for kinds of holdings such as strata (sectional) titles.

**Family lands (Caribbean situation)**

Subject to articulating the appropriate qualifications and assumptions, and having sufficient sales evidence, family lands can be valued using conventional approaches. However, there could be risks involved concerning family disputes and the like, which would have to be assessed for risk on a case by case basis.

**Informal settlements**

Normal valuation protocols can address such settlements. However, a key concern is one of affordability; it may be the case that the cost of a formal valuation exceeds the value of the property.

**Unregistered easements**

These can be valued by conventional approaches but are especially risky in domains where the law does not protect them. It must be remembered that in many domains all real property transactions are to be evidenced in writing to be enforceable, and this should apply in this context, even if the written document is unregistered. If there is no such document, or no system of law to enforce such easements, then the information costs could quickly exceed their value.

**Cultural and sacred sites**

Once again, the market value of a heritage site depends on what the market could use it for, subject to the legal restrictions in the relevant domain. Furthermore, there could be socio-cultural values attached to the properties which could supply significant economic and other benefits at the societal, or even national scale. For example, the Taj Mahal provides large economic benefits at the social scale which would be much higher than its value to an individual owner in terms of admission tickets etc. The most practicable approach to the value of a sacred tree or grove may be a values jury selected from amongst a similar population to those considering the tree to be sacred.

**FOREWORD BY UN HABITAT GLTN, FIG & RICS**

Basic statement of intent and quotes from leaders (Head GLTN, FIG President, Chair FIG Comm 9)

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## EXECUTIVE SUMMARY

Value, and its attribution to unregistered and/or informal land & property, is important information for effective land acquisition, taxation and transfer processes and is, therefore, a key component of land administration systems. Indeed, it can be argued that 'value', whether defined in purely economic terms or in a wider context of social, environmental and cultural value, is the key to establishing tenure security and identification of legitimate ownership. The valuation of land rights is directly linked to local and regional revenue generation, functioning formalized land & property markets and enabling land-based financing (as underlined within the New Urban Agenda). However, this is a difficult, complex and often emotionally and politically fraught area, often with (very) limited professional capacity and knowledge, a chronic lack of data and in many cases cultural/social understanding. Several organisations, agencies and NGOs (GLTN, RICS, FIG, UNFAO, Namati) have attempted to better understand unregistered land valuation and informal markets through extensive research, policy guides, international guidelines (VGGT) and due diligence standards (ILMS & UNFAO).

For example, with support from professional organisations and land and valuation experts, UN-Habitat, RICS and FIG, the Global Land Tool Network<sup>1</sup> published "Valuation of Unregistered Lands: A Policy Guide"<sup>2</sup>. Building on that Policy Guide, this Practice Manual provides recommendations for the valuation of land rights for land-based financing, land taxation, secured lending and fair compensation assessment. It provides key principles and practice-based guidance for appropriately qualified professionals to undertake valuations of unregistered land rights based on available evidence and data. It is intended to assist in the achievement of professional level valuations of unregistered lands and enable users of the manual to discern how and when this has been achieved. The manual serves to strengthen the implementation of the continuum of land rights as a key tool to strengthening security of tenure for all. Governments, policy makers, the valuation industry, practitioners, capacity development institutions and other interested parties should use this manual to help achieve the SDG goals of conflict prevention, food security, gender equity, justice and sustainable urban and rural development. It is expected that, over time, regional and national best practice will add to a body of knowledge that informs subsequent revisions of the manual.

The principles and practices recommended in this manual are designed to be applicable in all unregistered land contexts from international land acquisition purposes to an exchange of a house in a favela in Rio de Janeiro. The manual is global in scope, based on agreed standards of best practice, due diligence protocols and on expert collaboration. It explains the key concepts of valuation, land tenure, bases of value, professional capacity building, valuation frameworks and provides an example unregistered land valuation template/aid memoire for use.

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<sup>1</sup> The Global Land Tool Network, as facilitated by UN-Habitat, is an alliance of international, regional and national partners working together to "securing land and property rights for all" through the development of pro-poor and gender responsive land tools and approaches within the continuum of land rights framework. It supports the implementation of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Forests and Fisheries (VGGTs), the Framework and Guidelines for Land Policy in Africa, Sustainable Development Goals (SDGs) and the New Urban Agenda.

<sup>2</sup> <https://gltn.net/2018/05/02/valuation-of-unregistered-lands-a-policy-guide/>

## PART A: VALUING UNREGISTERED LAND – RECOMMENDATIONS

These recommendations are designed to relate existing valuation standards and guidance to the valuation of unregistered land and to help create a robust and basic framework of consistency that can be applied to the valuation of unregistered land. More in-depth details and commentary can be found in Part B and within Appendix 1 – Unregistered Land Valuation template.

The methodology and process of valuation should remain constant, employing relevant IVS standards, when valuing land to market value. The added complication of the land being unregistered and/or acquired means that the valuer will have to consider and include/exclude a range of different issues such as non-market values (socio-cultural value and/or natural value. Consideration should also be given to the various elements of compulsory acquisition compensation as outlined in UN FAO VGGT 18.2. Additional value in addition to market value may be negotiable. Valuers and other users should refer to Part B for further contextual information and detail on bases of value.

Legitimate holders of unregistered land rights need access to accessible, affordable, competent and unbiased valuation advice. In all cases, that is to take the form of presentation of the value-relevant qualities and quantities of the land and the rights concerned and the evidence of their value, vetting that evidence in terms of the relevant definition of value, and guiding the client from that evidence via the relevant valuation considerations to the valuer's conclusions.

### Governance

- The valuation should be undertaken in accordance with international valuation standards.

### Valuation process

- Evidence should be vetted according to its relevance not only to the property concerned, but also to its applicability in terms of the relevant definition of value. For example, when it comes to market valuations the IVS definition can be disassembled (see appendix 2) as:
  - **Market value is the estimated amount** - The valuer should ask, to whom, by whom and for what?
  - **For which an asset or liability would exchange** - The valuer should always check the relevant laws and institutions that apply in that market and social market.
  - **On the valuation date** - Every valuation should be at a past or present date.
  - **Between a willing buyer and a willing seller** – the valuer must understand and integrate any aspects of compulsion that may affect the transaction.
  - **In an arm's length transaction** – the valuer should be assured that the parties are to be considered as being independent of one another.
  - **After proper marketing** – the valuer should understand any issues of timing of the transaction.
  - **Wherein the parties had each acted knowledgeably, prudently and without compulsion** – The valuer must identify the legitimate parties to the transaction and understand their authority to act.
- A valuation of unregistered land rights requires evidence-based research, and the valuation report itself is to report both that research and how it has been applied to estimate the value of the property concerned.

- Valuers and suitably qualified (see Part B section 3 - Competence and objectivity) land professionals should use the template in Appendix 1.
- Valuers should expertly examine the property, the property rights, and any circumstances which may affect the value to be estimated.
- For a market valuation, assume the existence of persons participating in an exchange at a particular past or present date who both possess and exercise the qualities needed to meet the definition of value concerned. It does not mean identifying any such parties.
- The valuer should determine whether unregistered land rights are held under customary forms of tenure. If they are, the valuer should identify the form of customary tenure and its relationship to (and potential conflicts with) registered land and associated state laws.
- The valuer should determine whether the land is held individually or communally.
- The valuer should consider and include/exclude a range of different issues such as non-market values (socio-cultural value and/or natural value).
- It is important for the valuer to refer to potential tenurial difficulties, and clearly state the assumptions that have been made concerning them. For example, a valuer may make a *special assumption* that the provenance and ownership of the land rights were certain as at the valuation date. It is important for the valuer to alert the client to the degree of uncertainty in relation to this assumption. It is not the valuer's direct responsibility to determine ownership, but it is to alert the client if normal professional due diligence would discover such uncertainty, and to allow for any effect of consequent risk on the estimate of value if so, instructed by the client.
- The valuer should note and analyse any tenure indeterminacy and estimate its effect on value. Value adjustments may be made in respect of the additional costs, including delays, that prudent willing buyers would allow for.
- Customary land rights that are not registered may invite conflicting claims in terms of ownership and occupation. The valuer would need to understand and consider the impact of such conflicts on value.
- In informal settlements, there may be "adverse" occupations, often on government or state lands. Thus, in law, the ownership is the government's, whereas in practice, the market sees the ownership in fact (*de facto*) as those that occupy the land. Valuers should determine whether such rights are transferable and thus whether they are capable of exhibiting a market value.

#### **Valuation application**

- Valuations may be used to determine rating and tax assessments, but rating and tax assessments are never fit for purpose as a basis of compensation for expropriation.

#### **Valuations for expropriation**

- The valuer should determine whether unregistered land rights are to be valued for expropriation purposes.
- The valuer should remain focused on the estimation of market value of the land rights that are to be expropriated. This, in itself, is not straightforward if there is little or no evidence of a market (and therefore transactions) for the land rights to be valued.
- If there are laws governing expropriation of land rights and the compensation that should be paid, then these laws must be followed. These laws may include a definition of market value (or some other variation of compensable value) that is different to that set out in valuation standards. If that is the case, then the law must be followed.
- In cases where compensation for expropriation of land rights is being funded donor organisations such as the World Bank or the Asian Development Bank, they may require the valuer to apply an appropriate definition of value. But in all cases, the country's laws take precedence. If there are any differences between those laws and the policies of a funding organisation, these should be pointed out in the valuation report.
- The valuer should determine who is entitled to compensation. For example, are there certain occupiers who are excluded from receiving compensation for expropriated land rights? These may include informal occupiers, temporary or periodic holders of use rights, or tenants.
- Valuers should be competent to advise on the interfaces between the estimate of market value and other forms of compensation that might be available to the affected party. These other forms of compensation might be non-pecuniary in nature – the provision of alternative land rights, perhaps – and their effect on the market value of the expropriated land requires particular attention. For example, if there is a large-scale expropriation of land under way, these other forms of compensation could influence the level of transaction prices for potentially affected land. In other words, it may influence the market, and valuers should be cognisant of this in terms of ensuring the principle of equivalence can be upheld: the compensation paid leaves the affected parties no worse off than they were before.
- Consideration should be given to the various elements of compulsory acquisition compensation as outlined in UN FAO VGGT 18.2.

### **Valuation report**

- A valuation of unregistered land rights should present the value-relevant qualities and quantities of the land rights concerned and the evidence of their value, vetting that evidence in terms of the relevant definition (basis) of value, and guiding the client from that evidence via the relevant valuation considerations to the valuer's conclusions.
- The valuation should leave the reader of the report, if not with the level of understanding sufficient to be considered a knowledgeable and prudent party to the relevant transaction, then at least in a position to know what further requirements there may be to achieve that level of understanding.

## **PART B – VALUATION OF UNREGISTERED LAND – CONTEXTUAL INFORMATION**

### **Context**

Valuation is at the base of all economic activity (Ring & Boykin, 1986. *The Valuation of Real Estate*). Markets, and therefore market values, transcend and include all economic systems. Such systems come and go, but market exchanges may remain even when money, laws and other social infrastructure do not exist. That is, they are fundamental to economic systems, not the other way around. So, while it is essential that national laws, statutes and regulations are adhered to by the valuer, regardless of the registered status of the land rights, it is only transactions that are specified as illegal that are beyond the remit of a valuer in the domain concerned.

That being understood, the professional level valuation of unregistered rights must absorb the lessons from the valuation of registered land rights. When possible, the same professional standards and codes of practice should apply.

When valuing unregistered land rights, both professional level knowledge of the principles and practices of valuation and an expert-level understanding of the market for the land right and the qualities and quantities of whatever that land right bestows are essential. Once those are in hand, one will be competent to determine the occasions when it is necessary to deviate from valuation practice as it applies to registered land rights. This may be because information is not available or is difficult to obtain and assumptions and special assumptions are required, or it may be because different methods of valuation are required. Valuation reports in relation to unregistered land will therefore require additional information to that of reports in relation to registered land.

The purpose of this manual is to recommend ways in which the valuation of unregistered land rights can be undertaken. It does so by building on guidance that has been published by international organizations such as the United Nations and the World Bank and by national donor agencies and professional organisations such as USAID and the Royal Institution of Chartered Surveyors. The key documents to which this guidance note refers are:

- a) The UN-Habitat policy guide on valuing unregistered land<sup>3</sup>
- b) UN FAO technical guide on valuing land tenure rights<sup>4</sup>
- c) International Valuation Standards<sup>5</sup>

More specifically, this manual follows on from the GLTN policy guide, develops the technical guidelines that were set out in the UN FAO VGGT TG on the valuation of land tenure rights, utilizes the governance framework set down by the International Valuation Standards Council (IVSC), and applies them to the valuation of unregistered land rights.

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<sup>3</sup> McDermott, M., Myers, M. and Augustinas, C. (2018) *Valuation of unregistered lands: a policy guide*, United Nations Human Settlements Programme UN-Habitat.

<sup>4</sup> Food and Agriculture Organization of the United Nations (2017) *Valuing tenure rights: a technical guide on valuing tenure rights in line with the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*.

<sup>5</sup> International Valuation Standards Council (2020) *International Valuation Standards (IVS)*, International Valuation Standards Council.

The remainder of this section of the guidance note explains what is meant by unregistered land rights with specific reference to their value and the process of valuing them.

### Unregistered land rights

Land *tenure* refers to the relationship, either formal or informal, between members of a society (as individuals or groups) and land<sup>6</sup>. Land can be taken to include other natural resources such as water, trees and minerals. Land tenure is a social construct and usually manifests itself as a set of rules that regulate how land *rights* are allocated among members of society. These rights are myriad, but the main ones relate to the right to use, transfer or alienate and to exclude others. The 'holding' of rights to land is often referred to as *real property* or *immoveable property*.

The consequence of land tenure is that one piece of land may have many rights relating to it, and these rights may be held by many different members of society. For example, a state may hold an overriding right to expropriation, a freeholder may hold transfer rights, a lender may hold repossession rights, a leaseholder may hold use rights and society as a whole may have a right of access. Relationships between rights and those who hold those rights can be complex and difficult to identify, particularly if they are unregistered. It is these unregistered land rights, and the process of valuing them, that is the focus of this guidance note.

'Unregistered' is a broad term that refers to land rights that may or may not be recognized by the nation-state but have not been registered or recorded in any formal sense. In terms of land ownership, this means there might not be any deeds of sale or title certificate. In terms of occupancy, there may not be a written contract or lease between owner and occupier. In terms of land use, there may not be an up to date record of what land is being used for and there may not be any regulation of land activities, development, etc. Moreover, land rights may be in communal ownership or occupation, or there may be customary land rights.

It is a recognition that land rights may lack formality and information about land rights may be difficult to obtain, but still be valuable.

When land rights are unregistered, it is difficult to identify owners and occupiers of land, to determine what rights they have, and to understand how transfers of those rights takes place. Yet these are the fundamental information requirements to which valuers apply consistent and transparent processing and analysis techniques in order to estimate the value of land rights.

Unregistered land rights include informal occupation, communal land rights, and customary land rights. In fact, any land rights and transfers of those land rights between parties that are not recognized by the nation-state are considered unregistered land rights for the purpose of this guide.

### The value of unregistered land rights

Land rights may embody multiple forms of value. For example, land rights may have a value in their existing use value, and a different value when allocated to an alternative use. These values depend not only on the supply of and demand for different land uses but also on the regulation of those uses by the State.

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<sup>6</sup> Food and Agriculture Organization of the United Nations (2002) Land Tenure and Rural Development, FAO Land Tenure Studies 3, Rome.

More fundamentally, land rights may have a market value of their economic capital, and a non-market value of their natural capital and sociocultural capital. It is usually possible to express the market value of economic capital in monetary terms, but it may not be possible to do so for all the non-market value of natural and sociocultural capital. In which case, 'value' ceases to be a monetary amount but a measure of 'importance' too, leading to the concept of 'value pluralism', in other words, several values that are not reducible to a single value (OpenNESS, 2014). While some of the recommendations for estimating market value may also be applicable in estimating what weights are to be placed on other values, others may also be applicable that are unique to the valuation concerned.

Unregistered land rights have value, and this may be market value or non-market value or both. In this manual, the focus is on market value. There may be reasons why the market value of unregistered land rights is often lower than the value of comparable registered land rights. For example, the ownership of unregistered land rights might be less secure, there may be restrictions on or indeed prohibition of transfer or sale to another person on the open market, or it may be more difficult to obtain precisely what land rights are held. Such characteristics increase the uncertainty (and therefore perceived risk) and decrease the marketability of unregistered land rights. Both of these impacts lead to a reduction in market value.

#### Valuing unregistered land rights

A valuation is an estimate of the value of land rights. Usually it is a financial estimate of the transfer price or market value of land rights. Valuations are often required when land rights are being transferred from one party to another, are being expropriated, are to provide security for a loan or form the basis of assessment for land taxes.

Valuations fill a price information gap. The gap is caused by the decentralised nature of the real estate market and the infrequent transaction activity in relation to these large, heterogeneous and high cost assets.

In many countries, valuation practice has evolved to meet these requirements. Yet in many other countries, despite acknowledgement of the importance of impartial and objective valuations of land rights, valuation professions have yet to establish themselves.

This manual expands upon the essential components of the valuer's job in the context of the valuation of unregistered land rights. These comprise the ability assimilate available and relevant land information, interpret the market or markets in land rights, and assign robust and defensible valuations of their transfer prices.

A central task of a valuer is to read and interpret market activity. In the case of unregistered land, this task becomes more difficult, expensive and time-consuming. It is possible to identify the following challenges that valuers face when valuing unregistered land rights:

- An inadequate legal and/or administrative framework that does not allow for the efficient functioning of the property market, particularly in relation to the transfer of land rights in an open market
- Inadequate planning and poor regulation of land use and building standards
- A paucity of reliable published information. Property records may be poor, or non-existent. Collecting data from government may be difficult, if even possible. There may be virtually no information on specific transactions (sales, leases, etc.), or the properties themselves.

- Markets that are not open, arm's length transactions may be rare and non-monetary means of transactions common. In addition, there may be excessive state involvement in the market for land rights, e.g. rent controls and below-market state rents that transfer value from the property owner to the lessee.
- Greater volatility of property markets
- A lack of adequately trained professional valuers and an absence of national valuation standards
- External pressure

Appendix 3 lists different types of unregistered land rights and provides a brief commentary on the issues that may be associated with each.

### **Part B - 1: Valuation Recommendations - detail**

The aim of this section of the manual is to relate existing valuation standards and guidance to the valuation of unregistered land. The majority of these standards and guidance were written with developed economies and mature real estate markets in mind. As awareness of the usefulness of valuations grows in developing economies with informal markets in unregistered land rights, there is a perceived need to provide guidance on how these standards and guidance might be applied to such markets.

The key message from this section of the guidance note is that holders of unregistered land rights need access to accessible, affordable, competent and unbiased valuation advice.

This section is structured as follows:

- Valuation standards
- Bases (or definitions) of value
- Valuation of unregistered land rights
- Reasons for valuing unregistered land rights

#### **Valuation standards**

It is important to note that this guidance note, and the valuation standards and guidance to which it refers, are subservient to national policy, laws, statutes and regulations.

Many stakeholders who require valuations want independent estimates of value that are regulated by recognised standards. Practice varies from country to country, but regulation of valuations might be performed by state or local government, self-regulation by professional bodies, and preferably by a combination of the two.

Valuation standards support quality, integrity and consistency of valuation process. They promote good practice and provide a defence against claims of negligence. They mean valuations are reported in a consistent way.

Adherence to professional valuation standards can mitigate against a regulatory environment that does not provide adequate protection to owners of land rights.

There are international valuations standards, and many countries also have national valuation standards. The latter often evolve as markets in real estate emerge and mature.

Valuation standards can be categorised as procedural, definitional and ethical.

### **Procedural valuation standards**

Procedural valuation standards require valuers to explain what is to be done and what has been done. This is helpful because it protects users of valuations by helping them understand what they are getting. It also protects valuers because the reputation of all valuers would suffer if users has legitimate concerns about one.

The international valuation standards that relate to procedure are:

- IVS 101: Scope of work
- IVS 102: Investigations and compliance
- IVS 103: Reporting

### **Definitional valuation standards**

Definitional valuation standards present a formal codification of the principles and objectives of a valuation. They provide a common terminology to communicate valuation concepts and provide consistency.

The international valuation standards that relate to definitions are:

- IVS 104: Bases of value
- IVS 105: Valuation approaches and methods

### **Ethical valuation standards**

The key components of ethical valuation standards are transparency and enforceability.

The international valuation standards that relate to definitions are:

- IVS Framework
- IVSC Code of Ethical Principles for Professional Valuers

These standards are the result of vast experience. In the interests of both valuer and client, all persons attempting to value unregistered land are strongly advised to familiarize themselves with these standards, and always perform within them.

### **Bases of value**

#### **Market value**

The fundamental component of any valuation is the basis (or definition) of value that the valuer uses. By far the most widely adopted basis of value is market value, but other bases have been defined by the IVSC. The basis of value that is adopted depends on the purpose of the valuation.

Market value is an estimate of exchange price between a willing buyer and a willing seller. Its primary application, therefore, is for estimating exchange prices in open markets. For land rights that are traded for economic advantage, such as agricultural, commercial and industrial land use, it is often possible to value them by capitalising an estimate of future economic returns. For land rights that are traded for socio-economic reasons, such as residential land use, it is possible to value them by comparing transaction prices with one another. For land rights that are rarely, if ever, traded, but are recognised as having economic potential, or a value in use, then the cost of replacing them would be taken as a proxy for market value. A reservoir would be a good example of this.

Even in the clearest and most transparent land markets, there are occasions where there is not enough evidence available to provide definitive answers concerning a property's market value, let alone determining adequate compensation for complex issues around social disruption, natural capital value, and the like. When such matters arise in such markets, the traditional dispute resolution procedures often involves valuers representing the conflicting parties. In any such cases, all the valuers concerned must firstly state if they are acting as experts or advocates.

When such cases arise, common law advises that "the valuer in arriving at his opinion in these difficult matters may have to draw upon his general knowledge and experience, including perhaps experience in other situations which, although lacking in complete comparability, may yet provide an experienced valuer with guidance and suggestions as to the general approach which may be made and as to considerations which may become relevant (*Bingham v. Cumberland County Council* (1954) 20 L.G.R. 1, at pp.18 and 19). Another common law judge has advised that:

"It is the function of judicial power to weigh the opinions of those who possess this art [of valuation] when expressed in the form of admissible evidence. It is by a combination of these qualities in the valuer and the judge respectively that the solutions have been found, generally of a satisfactory nature, to the many diverse and complex problems of valuation and assessment of compensation which over the years have arisen in this developing community." (Else Mitchell, 1963, p. 561).

For unregistered land rights, there are additional complexities. It may not be so easy to identify the precise land rights that need to be valued. They may not trade very often, if at all, for economic reasons if their occupation is for subsistence or socio-cultural reasons. As a consequence of this, transactions may be far less frequent, which makes the valuation task more challenging.

With far less transaction activity (and therefore valuation activity) in relation to unregistered land, on the occasions when they are required, perhaps for expropriation purposes for example, valuations can be particularly difficult and often controversial. Disputes can arise over estimates of value and the market value basis found lacking in such circumstances.

While the advice of judges as quoted above has global relevance to valuation practice, it should be remembered that not only judges provide verdicts in cases: juries do as well, juries of one's peers. A value jury comprising those best capable of forming an opinion concerning market value in the relevant market, and similar innovative approaches, may be more fit for purpose in the valuation of unregistered land (for example in cases of large-scale expropriations) than formal IVSC-recommended processes. While the latter are to be preferred insofar as they are practicable, in many situations which the valuer may encounter with unregistered land rights such processes may have little or no prospect of providing timely and satisfactory resolutions. In such cases, and in certain circumstances preliminary or supplementary to judicial resolution, innovative valuation processes, such as but not exclusively the above-mentioned

value juries, may be tried to determine whether they are professionally informative in the relevant market context.

In accordance with the observation mentioned in the introduction that “the character of every act depends upon the circumstances in which it is done” (Holmes 1919), so does the character of a valuation of unregistered land. The policy guide’s Box 1 provided a series of questions towards understanding the circumstances of potential evidence to inform a valuer’s estimate. When it comes to the questions concerning what would make the imagined highest and best use buyers and sellers willing, it asked “Did social, cultural, religious, spiritual and environmental values play a role?”

That is because, consistently with recent finding in behavioural economics and neuroscience, section 18.2 of the VGGT recognises that a wider range of valuation criteria may fall within the ambit of the IVSC definition of market value than those confined within economically reductionist assumptions. Accordingly, section 18.2 states that valuations should strive to ensure that valuation systems take into account social, cultural, religious, spiritual and environmental values (VGGT 18.2). The FAO technical guide (2017) on valuation added that there are some socio-cultural values that people will trade, and others they will not.

The valuer is therefore to determine which values are tradable in that particular market, which are not, and to what weight they hold if they are relevant. There are values that are far more important to some persons that cannot be traded, and in accordance with the IVS such motivations cannot influence market values unless and until they can be expressed through the relevant market by monetary means.

We emphasise that market valuers can only derive their estimates from the pool of those with the financial wherewithal to express their values in the relevant market. That is a very useful thing to know, but it is not the only thing to know when coming to understand a market.

That does not mean such values as were not expressed through market processes should be dismissed: it means the valuer has found that those holding them are not those able to express them through the market from lack of the means to do so. In the laws of many countries’ compensation for loss of such values by expropriation may be granted as solatium, but while a valuer may identify such issues, the market valuation cannot enfold them into the market value unless the market itself does.

Questions of the nature of those in the policy guide’s Box 1, here annexed as Annexure 1, should be engaged by the valuer to determine which value judgements of the nature described in section 18.2 enter into the decision-making processes in the relevant market, and to what degree they are admissible as knowledgeable and prudent in that market.

A stark, albeit rare example would be a site associated with a highly valued person of a particular belief system. Just as with the value of works of art, if the association was proven it could have one value; if the association was disproven, it could have another. There is nothing irrational about that if the purchaser is likely to be able to resell the property right for an equal or larger sum.

There could be many such associations. For example, the wilful destruction of an Australian Aboriginal sacred site has caused the loss of millions to the mining company concerned, without even considering the company’s loss of goodwill. Due diligence investigation will neither automatically exclude or include such associations. If a valuer had valued that land simply on the net returns that a mine there would bring, entirely ignoring the requirements of section 18.2, that valuer could well be sued for negligence.

### **Other bases of value**

The IVSC recognises the limitations of the value-in-exchange concept of market value and has defined further bases of value. These include *inter alia* equitable value and investment value. Equitable Value is designed to reflect the interests of the specific parties rather than only referring to wider market interests. Taking a leasehold as an example; the lessor may be prepared to pay more than 'the market' for the lessee's interest because the merger of the two interests creates an unencumbered freehold interest. Investment Value is the value to a particular owner or potential purchaser for their own specific investment or operational objectives. Investment value refers to value-in-use and is regarded by the IVSC as distinct from value-in-exchange or market value.

There is, therefore, recognition by the IVSC of pluralistic forms of value and these other bases of value open up the idea of non-market value, i.e. value considered important to specific parties but not considered important (at least in terms of exchange value) by the market as a whole. For market value, valuers consider the notion of highest and best (or optimum) use of land and envisage a process of competitive bidding between willing and informed market participants. With non-market value, there is likely to be more heterogeneity between land rights. For example, local occupiers and owners may place a higher (non-market) value on the natural and sociocultural advantages (or capital) arising from land rights than non-locals would.

Once again, the situation becomes more complex in the case of customary land, where more than two parties might be involved. An occupier may place a great deal of non-market value on their land rights to reflect social ties, cultural traditions, ancestral links, friendship bonds and so on. A community leader may recognise these but value them differently to the occupier. The potential purchaser may not recognise them at all and therefore place no value on them. Each party assigns a different value to the land rights and therefore unable to agree on a unified value.

As they stand, IVSC bases of value fail to accommodate these more complex relationships involving the occupation and ownership of land rights but this situation is likely to change. In the meantime, valuers should try to consider which non-market values are important to the relevant parties, and to what extent (i.e. their value). These may include social and cultural value, religious and spiritual value, and environmental value. If they are value significant, then valuers should to reflect them in their valuations.

### **Market value and non-market value**

As addressed above, unregistered land use rights are capable of providing market and non-market value, i.e. the market value of economic capital and the sometimes market value and other times non-market value of natural and sociocultural capital. Often there will be blurred boundaries between them, and this makes it challenging for a valuer to allocate quanta of value to each of them.

Land rights, both registered and unregistered, provide *economic capital* in the form of financial security and revenue-generating potential. Land rights afford financial security by providing an ability to subsist, a place to reside, to conduct business, and a store of potential wealth. Land rights offer revenue-generating potential in the form of rent or income from crops, businesses, forest products, fishing, grazing, and so on.

Rao (2018) identifies *sociocultural capital* as:

- Security, including livelihood security; security of physical space and protection from eviction or relocation
- Self-identity: with possessions; in social status; personalisation of property, place and occupancy; as part of territorial identity. This might include traditional use rights, such as access to communal

pasture, forest land, fishing places, medicine, natural resources, religious sites, infrastructure and services such as transport routes, schools, health centres, community centres, etc.

- Social capital, including relationships and ownership as a socio-cultural status
- Social equity and empowerment (political, gender, social)
- Psychological wellbeing, personal comfort and convenience

*Natural capital* takes form of ecosystem services.

Socioeconomic capital and natural capital are rarely, if ever, traded in a market. Their value is more intrinsic, difficult to identify and often impossible to value in monetary terms. There may be certain services that, say, an ecosystem provides, such as drinking water, the economic value of which could be estimated in financial terms. However, most sociocultural and natural capital is not so easily handled.

The valuation of sociocultural and natural capital is a rapidly evolving area of research and techniques that have been employed in fields such as ecological economics are not an established discipline of real property valuers yet. Their focus has been on the estimation of market value, in other words, the economic concept of value in exchange. This is so even in circumstances where land rights are to be compulsorily acquired and compensation over and above market value is warranted. In such cases, the estimation of 'non-market' loss and disturbance compensation are not usually within the remit of a valuer.

It is likely that this specific focus on economic value will change as the non-economic, i.e. sociocultural and natural capital value of land rights begin to be reflected in values in exchange. An example might help illustrate how this could occur. In the UK, the Environment Act 2020 contains a provision relating to 'biodiversity net gain' whereby developers must ensure no loss in biodiversity as a result of their development schemes. This can be done on-site or off-site, and the latter may involve purchasing rights over rural land to ensure that it remains undeveloped and unfarmed. In this way, the market value of such land should reflect any price paid for its natural capital value, i.e. its non-productive, non-economic value.

Due to the emerging nature of this area of real property valuation, this first edition of the manual does not stress recommendations for practice in this regard; the focus here is on the estimation of the market value of unregistered land rights. This is likely to change in future revisions to this guidance.

### **Valuation processes - unregistered land**

Valuers face particular challenges when valuing unregistered land.

The nature of only some of these challenges were tabled in the actual context of Zimbabwe (see appendix 3 case studies). In the next case study, we present a scenario abstracted from experiences in many islands of the South Pacific. They contain both similarities and differences, and in Box 4 below we recommend best practices towards addressing those challenges.

Precision in market valuation requires a good deal of comparable market evidence to achieve, and such evidence may be scarce or even missing entirely in many valuations on unregistered land.

Landowners, tenants and occupiers, particularly in relation to rural land, may lack knowledge and information about their land and property rights and the value of those rights. It is important, therefore, that valuers are able to explain the nature and value of their rights in a way that is

understandable, impartial, objective and independent of the party that may have commissioned and/or paid for the valuation.

International Valuation Standard IVS 400: Real Property Interests paragraph 20.1 states that “Property interests are normally defined by state or the law of individual jurisdictions and are often regulated by national or local legislation. Before undertaking a valuation of a real property interest, a valuer must understand the relevant legal framework that affects the interest being valued.” Paragraph 20.2 defines a real property interest as “a right of ownership, control, use or occupation of land and buildings.”

Currently, the IVS is silent on the issue of unregistered real property interests, including land rights. A particular problem for valuing unregistered land rights is determining who ‘owns’ the land rights. It may be the case that there is no legal framework that affects the interest being valued. If that is the case, the valuer should state this and what has been done to proceed with the valuation. This may be an adjustment to value to take account of increased risk or it may take the form of an assumption or special assumption that assumes legal recognition of the unregistered land rights.

Unregistered land rights may be owned customarily, communally or informally. Land rights may be held by a representative of a community for the benefit of that community. Land rights held communally means that the same physical land parcel can have numerous “owners”. Such land rights can be transferred, but this is usually done within the community, in favour of community members. Transfer to strangers may be possible but is usually highly discouraged as it is akin to the selling of a birth right. In other words, there are significant restrictions on the ability to alienate customary and communally held land rights.

The economic potential of land may be realised by granting leasehold tenure rights. However, if the use of land is influenced by customary rights and practices, it may not be possible for the holder of customary land rights to pursue the highest and best use of the land. Thus, sub-optimum use of land, together with restrictions on the transfer of customary land, and consequent inability to borrow against these lands, may lower their value.

### **Valuation purposes - expropriation**

Land and property rights are valued for reasons outlined above; buy/sell/rent investment and occupation decisions, financial statements, lending decisions and for taxation purposes. However, perhaps the most challenging area of valuation of unregistered land rights is the compulsory acquisition or expropriation of those rights. This is because the ‘seller’ in these cases is not a willing seller, whereas the market value basis defines regards the seller as a willing participant to the transaction.

To resolve this issue, the seller may be compensated over and above the market value of their land rights. The estimation of this compensation is not the remit of the valuer – loss payments are usually statutorily set, and the calculation of disturbance is an accounting process. It is up to the courts (or the other relevant bodies) to address heads of compensation beyond market value. The valuer’s role ends at assessing the influences, if any, of these compensation amounts in terms of relevant information analysed as evidence.

In Western societies, loss payments and disturbance compensation sums may be relatively small compared to the market value of the expropriated land rights, but with the affected parties on unregistered land, the consequences of societal disruption may greatly exceed the market value of the land rights themselves.

## **Part B 2 - Competence and objectivity**

It is important, particularly when valuing unregistered land rights, that both the valuer and others that rely on valuations, understand what is expected in terms of the competence and objectivity of a professional valuer.

### **Competence**

An assurance of competence can be provided by a minimum level of education and qualifications related to the discipline of valuation. In many countries, education and qualification standards are set by professional bodies, i.e. there is a high degree of self-regulation of the profession in this regard. In other countries, these standards may be set by the State. In the latter case, it is important for the State to maintain the currency of these standards.

The advantage of a professional body or association is that it can take on the role of not only education and qualification standards, but it can also help maintain the expertise of valuers by organising professional development, publishing news, conducting research and so on.

Similarly, professional behaviour might be self-regulated, by a professional association for example. Alternatively, the role and extent of work undertaken by valuers may be set by statute, via licensing for example.

It is important to note that valuation is not a purely technical discipline. Although a valuation follows a set process (described in Section 5), the central role of a valuer is to form a judgment about the value of land rights that is based on an assimilation of facts and a set of assumptions in the absence of facts. A valuer uses knowledge and experience to form this judgment.

A formal and transparent recognition of a valuer's education, qualifications and experience is essential, therefore, in reassuring those who might rely on valuations as to the competence of a valuer.

In many countries, a process for recognising a valuer's knowledge and experience may not exist in an established form, perhaps due to a lack of capacity, an unwillingness to pay for valuations, or a lack of client awareness.

Whether the land is registered or unregistered, there are certain real estate tasks that may not require the services of a qualified valuer or a formal valuation. These might include - provision of brokerage advice in the course of market transactions; provision of valuation advice to a client for internal purposes only; or the performance of statutory functions such as a property tax assessment, where the process is prescribed by law. For all other valuations, the degree of formality will depend on the purpose of the valuation and its likely disclosure to third parties. Valuations for lending purposes and for company financial disclosure, for example, will usually be undertaken by valuers who have had training, are insured and professionally qualified. This is important as it reassures clients that the advice is regulated, consistent and objective.

The UN FAO recommends that "States should ensure that appropriate systems are used for the fair and timely valuation of tenure rights for specific purposes, such as operation of markets, security for loans, transactions in tenure rights as a result of investments, expropriation and taxation."<sup>7</sup> The UN FAO

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<sup>7</sup> Food and Agriculture Organization of the United Nations (2012) Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, Section 18.1.

technical guide on valuing land tenure rights includes a chapter that expands on this recommendation.<sup>8</sup> It emphasizes that there are three key components of effective valuation systems: access to information on the nature and extent of the land and property to be valued, together with comparable evidence and information on the wider market; a sufficiently qualified and adequately resourced valuation profession; and robust governance of that profession. The chapter's recommendations are summarised as follows:

- Tenure registration systems and other land and property information systems should be developed, maintained and adequately resourced. These systems should record ownership, use and value details in relation to individual and communal tenure rights. It is likely that coordination will be necessary when the different systems are developed in separate government departments. Common referencing and unique identifiers are essential in these circumstances.
- It is important to record information on customary and informal tenure rights as well as formal rights. Valuation systems and processes should be capable of managing complex structures of formal and informal tenure rights.
- Transaction details for state-owned and private land, for formal and informal tenure rights, and for capital and rental transactions, should be publicly accessible, with appropriate safeguards on personal information. Transaction taxes should be kept low.
- Valuations should be transparent, coherent and consistent, and be undertaken by honest, impartial and competent valuers.
- A sufficient number of valuers are required, with requisite education, qualifications, skills and experience. A valuers' association should oversee education and skills development, regulate the conduct of valuers, and provide an affordable and accessible means of dispute resolution.
- Valuer regulation should centre on the creation and adoption of professional codes of conduct and ethics. Governments should support such activity and encourage openness and transparency in the valuation process.
- Successful valuation practice requires well-drafted standards that are effectively enforced. International standards should govern valuer responsibilities and ethics, and national standards should operationalize approach and method. All valuation standards should be continuously monitored and revised on a regular basis.

### **Objectivity**

As well as competence, those who might rely on valuations should be reassured that the valuer has behaved objectively, independently and with integrity when conducting a valuation. This is a vital component of valuation regulation. If users of valuations do not believe them to be a fair reflection of the value of land rights, then the credibility of valuations is undermined. Stakeholders may have different views of what a fair value of land rights is, and this is a fundamental debate about value which is discussed in more detail below. However, the point being made here is that, whatever basis or definition of value is being used, the valuer is being objective in conducting the valuation.

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<sup>8</sup> Food and Agriculture Organization of the United Nations (2017) Valuing tenure rights: a technical guide on valuing tenure rights in line with the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, Chapter 5.

The key requirements of a valuation, therefore, are that it must be credible and cogent. Credibility depends on the trust that users place in valuations and an important means of assuring credibility is via a code of ethics (see IVSC Code of Ethical Principles for Professional Valuers<sup>9</sup> for example).

Cogency of a valuation depends on sound communication, both written and verbal. Valuation standards in many countries emphasise the importance of setting out very clearly the scope of work that a valuation is to involve between the valuer and end user at the start of the valuation process. Then, at the end of the process, many standards set out the key elements that a valuation report must cover. These vital steps in the valuation process are discussed in more detail in Section 5.

### **Valuation ethics**

The ways in which the competence and objectivity of valuers can be reassured might be set out in a code of ethics. The IVSC publishes a Code of Ethical Principles for Professional Valuers (as above) and this provides a useful framework at an international level.

Two areas of valuation practice where ethical behaviour faces its sternest test are conflicts of interest and client influence. Valuation regulation should include specific measures in these matters because, often, valuation services are provided by firms that also offer brokerage or agency services too.

A conflict of interest arises where a valuer's independence is compromised or is perceived to be at risk of being compromised. Some conflicts of interest are obvious; undertaking a loan valuation for a bank where the borrower is a member of your family, for example. Others are not so obvious; undertaking a loan valuation for a bank on a property that your firm valued last year for an investment sale, for example. A relatively common example is where a firm might conduct agency work as well as valuation work. Revenue from the agency work is in the form of percentage commission on sales. Valuations that help facilitate these sales not only generate its own fee income but also lead to commission on successful sales.

Even if a valuer behaves with the utmost ethical principles, an undeclared conflict of interest can undermine the perceived credibility of a valuation.

A useful reference document relating to conflicts of interest is the RICS Professional Statement on Conflicts of Interest, published in March 2017 (ref...). It explains how conflicts of interest that may arise in valuation work can be managed.

In a case where there is a conflict of interest, the risk of client influence can arise. Continuing the example above, where a firm conducts agency work as well as valuation work, the client who has instructed the firm to broker the sales might be a very large development company that provides the firm with a great deal of agency business. The fees for valuation work generate, comparatively speaking, much less revenue. This imbalance might influence the firm to accommodate the wishes of the developer and thus compromise the independence of its valuations.

This example is one form of client influence, taking the form of reward and coercive power. There are other ways that clients can influence valuers. A valuer might be asked to value an oil depot or a tourist resort. The valuer is reliant to a large extent on access to detailed information about the technical aspects of the depot and about the occupancy and financial information of the resort. If the client withholds or

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<sup>9</sup> <https://www.ivsc.org/standards/international-professional-standards/consultation/code-of-ethical-principles#tab-summary>

falsifies this information, then the client is influencing the valuation by exercising expert power and information power.

The primary factors determining the ability of a client to influence valuation practice are the type of client, the characteristics of valuer or valuation firm, the purpose of valuation and the information endowments of client and valuer. These are all matters that should be identified in a code of ethics and which should be addressed in the scope of work prior to undertaking a valuation.

The problems that these issues create are exacerbated when land rights are unregistered, and land markets are opaque. The reasons for this are myriad. A common problem is that the parties involved in the transaction for which a valuation is required may not be of equal standing in terms of coercive power and in particular reward power. When a valuation of customary land rights is required, there may be more than two parties involved – an occupier, a community leader and the purchaser for example – and the potentially misaligned incentives of each party can add to the complexity of possible conflicts of interest and client influence.

Therefore, it is important that the competence and objectivity of valuations are maintained by examining the circumstances of each valuation instruction to ensure that it complies with a published code of valuation ethics.

### **Professional qualifications and capacity**

In 2013 the IVSC published guidance on 'Establishing and Developing a Valuation Professional Organisation' (ref...). It provides good practice guidance on the role of the valuation profession and the role and responsibilities of valuation professional organisations. The guidance addresses a range of situations including where the profession does not exist in a country.

The guidance is presented in four parts:

- Establishing a valuation professional organisation
- Role and responsibilities of a valuation professional organisation
- Education and examinations
- Mentoring arrangements and setting priorities

Related publications of the IVSC include:

- The Code of Ethical Principles for Professional Valuers
- A Competency Framework for Professional Valuers

The IVSC guidance focuses primarily on the establishment of the structure and operation of a valuation professional organisation. The context or environment within which such an organisation might be established is not covered by this guidance. In countries where land rights remain unregistered, this context is key. In countries with registered land rights, it is possible for a valuation professional organisation to align itself with similar professional bodies from the legal profession, the planning profession, the construction industry and so on. With unregistered land rights, this alignment is more challenging. Potentially, valuers may find themselves more exposed to gaps in information and knowledge in relation to the real estate that they are attempting to value because it is not recorded.

In such cases, the knowledge, experience and skill set of valuers is critical, yet, if a valuation profession is not well established, these qualities may be spread more thinly across the jurisdiction. Partnering and shadowing become important means of building a knowledge base in these circumstances. Best practice might involve the identification of those valuers with relevant experience and knowledge, depending on the nature of the valuation task and the nature of the unregistered land rights.

The dissemination of knowledge, skills and experience is going to be challenging in terms of assembling information about market transactions because they are not registered. There will be a greater reliance on market brokers and agents. This can lead to conflicts of interest (ref relevant part of this GN...) which will require careful consideration.

Often valuers rely on an informal exchange of market information and this is likely to be more important in jurisdictions where unregistered land is more prevalent. These networks can evolve naturally at first but can then form the basis for a professional organisation. They rely on transparency, ethics and professionalism. Professional organisations have disciplinary proceedings for unprofessional behaviour and activities. In their early days, these informal groups can effectively self-regulate these matters.

Firms record their own market information but ultimately it is the sharing of this information that adds value and creates a firm foundation for professional advice. In other words, interpretation of information rather than access to information is where the value is added. Moreover, support networks, mentoring, continuing professional development to keep up to date with laws and regulations, sharing experiences by creating repositories of precedents of legal decisions and so on go together with the more formal education and training requirements of a valuation professional organisation.

## **Appendix 1 - Valuation of Unregistered Land Rights Template**

Indicative Aid Memoir (to be adjusted by valuer to optimally address local situations)

### **1. EXECUTIVE SUMMARY**

#### **1.1 Client and Client's Instructions.**

State the purpose of the valuation, and that it has been performed within international valuation standards.

Limit the use of the report to that client and other specifically nominated intended users. Those limits should include to the circulation of the report.

While it is reasonable to make certain assumptions in valuations, the strengths of those assumptions vary in different contexts. If there have been any particular assumptions, conditionalities, limitations on liability or non-compliance with IVS, they should be agreed between the valuer and client, and stated here. They may also be further specified in the relevant section of the report. In the absence of mention of such exceptions in the report, standard practices would usually be assumed to apply.

#### **1.2 Summary of Land Rights being Valued**

#### **1.3 Definition of Market Value**

##### **1.3.1 Distinctions, if any, from Market Value and the value/s being assessed under the instructions.**

#### **1.3 Date of Inspection and Valuation**

### **2. LAND RIGHTS DETAILS**

#### **2.1 Definition of land**

#### **2.2 Description of land rights in the area**

#### **2.3 Description of land rights being valued**

#### **2.4 Real Property Description**

#### **2.5 Possessor/s of land rights being valued**

#### **2.6 Benefits of, and Encumbrances to, those rights**

#### **2.7 Previous Transfers**

### **3. DESCRIPTION OF RELEVANT GOVERNANCE**

#### **3.1 Local, Regional and National Authorities**

#### **3.2 Value-Relevant Policies and Laws at each scale of governance**

### **4. LAND AND LOCALITY DESCRIPTION**

#### **4.1 Land Area, locality and description**

#### **4.2 Situation and Identification**

#### **4.3 General Locality and Surrounding Development**

#### **4.4 Services and Amenities**

#### **4.5 Social and Environmental Statement**

### **5. EXISTING IMPROVEMENTS AND USE**

#### **5.1 Introduction**

- 5.2 General Construction and Fixtures
- 5.3 Condition of Improvements and Utility

**6. LEASE SUMMARY/OCCUPANCY DETAILS**

If there are written agreements of this nature, they should be annexed to the report. Whether there are or not, the following information or its applicable equivalent should be included here:

- Lessor:
- Lessee:
- Commencement Date:
- Expiry Date:
- Option Period:
- Initial Rental
- Rent Reviews
- Current Rental
- Outgoings (and who pays what) .

6.1 Strengths, Weaknesses, Opportunities and Threats of and to the Relevant Rights

**7. COMPARATIVE MARKET INFORMATION**

This section is to inform the reader of the extent of the valuer’s investigations. That includes a description of the evidence relied upon, why it is reliable, and to what extent. It should mention any limitations or restrictions encountered concerning what the valuers ideally wanted to provide.

7.1 Category A1 Evidence

Individual evidence may be set out as follows, adjusted as optimal for the valuation concerned.

(thumbnail photos should be included):

Land Ownership Right Transfers

Signed, sealed and delivered market value transactions or evidentiary equivalent:

1.

Location	Date	Price	Building m <sup>2</sup>	Site

<b>Description</b>	
<b>Comments (including about comparability)</b>	

Land Occupancy Right Transfers

1.

Location	From	Term	Gross or Net Rent p.a.	Leased Areas m <sup>2</sup>	Rent / m <sup>2</sup>

<b>Description</b>	
<b>Comments (including about comparability)</b>	

7.2 Category A2 Evidence  
Concerning Land Ownership Rights  
Asking prices et al

1.

<b>Location</b>	<b>Date</b>	<b>Price</b>	<b>Building m<sup>2</sup></b>	<b>Site</b>

<b>Description</b>	
<b>Comments (including about comparability)</b>	

Concerning Land Occupancy Rights  
Asking rentals et al

1.

<b>Location</b>	<b>From</b>	<b>Term</b>	<b>Gross or Net Rent p.a.</b>	<b>Leased Areas m<sup>2</sup></b>	<b>Rent / m<sup>2</sup></b>

<b>Description</b>	
<b>Comments (including about comparability)</b>	

7.3 Market Overview and Comments

General evidence is to be included here, in particular matters that parties would consider generally relevant if they were of the nature of the persons envisaged in the IVS market value definition. This is to include the relevant unregistered land rights' equivalents of the RICS categories B and C applicable in formal property markets (RICS 2019, p. 13).

**8. Basis of Valuation**

Comment on the overall strengths, weaknesses opportunities and threats the above information provides which is of relevance to the reliability of the valuation for its stated purpose.

- 8.1 Highest and Best Sociolegal Use
- 8.2 Valuation Methodology and Calculations
- 8.3 Insurance Assessment

**9. VALUATION**

### 9.1 Value Estimate

For example: "Subject to the assumptions and qualifications contained within the body of this report, we have assessed the market value of the subject property as at the date herein at:

X units of the relevant currency in writing  
(Number in brackets).

9.2 Valuer's Signature, full name, and the professional qualifications giving the valuer the right to be considered an expert for the valuation concerned.

9.3 Disclaimers: these are to be in accordance with the relevant legal advice in the domain concerned.

Examples:

*'Neither the whole nor any part of this valuation or any reference thereto may be included in any published documents, circular or statement, nor published in part or full in any way, without written approval of the form and context of which it may appear.'*

*This valuation report does not purpose to be a site or structural survey of the land or improvements thereon, nor was any such survey undertaken.*

*The reader should be aware that the valuer will not be liable for losses relating to fluctuations in the property market or changes in Government legislation.*

*This valuation is exclusive of applicable taxes T and realisation expenses. This valuation is also subject to the improvements complying to relevant building codes and regulations.*

*The valuation is current as at the date of valuation only. The value assessed herein may change significantly and unexpectedly over a relatively short period (including as a result of general market movements or factors specific to the particular property). We do not accept liability for losses arising from such subsequent changes in value. Without limiting the generality of the above comment, we do not assume any responsibility or accept any liability where this valuation is relied upon after the expiration of 3 months from the date of the valuation, or such earlier date if you become aware of any factors that have any effect on the valuation.'*

N.B: ALL key materials, including the fee agreement, inspection notes, market and other relevant researches, records of any particular assumptions, conditionalities, limitations on liability or non-compliance with IVS, agreed omissions and like materials are to be recorded and filed well into the long term by the valuer.

### **EXAMPLES OF ANNEXURES**

1. Photographs
2. Locality Map
3. Letter of Instruction
4. Copy of Tenure Search Material
5. Copy of Occupancy Search Material
6. Extract from Relevant Socio-legal Frameworks

## Appendix 2 – Definitions

The IVS Framework defines three principal bases of value:

- Market value is the estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.
- Investment value is the value of the asset to the owner or a prospective owner for individual investment or operational objectives.
- Fair value is the estimated price for the transfer of an asset or liability between identified knowledgeable and willing parties that reflects the respective interests of those parties.

### **State land**

It may be possible to estimate the market value of state-owned land using conventional valuation approaches. However, there may be circumstances where customary or informal use of state land means that socio-cultural and environmental values may need to be considered alongside any market value. In such cases, values juries and other broader public consultation protocols could help determine these non-market values.

### **Communal land**

The valuation of communal land may require consideration of non-market value, particularly concerning identity construction (identifying as geographically based community members, often inclusive of one's extended family). When real property markets emerge on communal lands, they often do so by means of leases granted by the community. The value of communal land may be determined by capitalizing the sustainable income that can be drawn from it, or by comparing to the value of a similar lifestyle and income from registered land.

### **Rangelands (pasture)**

The capitalization of projected net income from such land may not adequately reflect value. Such a pure economic approach can miss other forms of value that may be derived from the land. A sales comparison approach may be more reliable, and if the market uses heuristics such as beast area values (which can enfold the agro-ecological potential of the land too), then the valuer can apply them too.

### **Customary tenure**

Individual parcels under customary tenure are held on the basis of the social cohesion and bonds between community and/or family, which in turn owns the land. Hence though the valuation can be done by traditional valuation methods, since the individual right is not a complete ownership right, the customary ownership rights of the community needs further consideration, with respect to the balance of the rights between the individual and the community. There are many variations of land held under group customary rights, including variations in formal systems. In the main, there are established protocols for valuations of this kind, and market precedents available for kinds of holdings such as strata (sectional) titles.

**Family lands (Caribbean situation)**

Subject to articulating the appropriate qualifications and assumptions, and having sufficient sales evidence, family lands can be valued using conventional approaches. However, there could be risks involved concerning family disputes and the like, which would have to be assessed for risk on a case by case basis.

**Informal settlements**

Normal valuation protocols can address such settlements. However, a key concern is one of affordability; it may be the case that the cost of a formal valuation exceeds the value of the property.

**Unregistered easements**

These can be valued by conventional approaches but are especially risky in domains where the law does not protect them. It must be remembered that in many domains all real property transactions are to be evidenced in writing to be enforceable, and this should apply in this context, even if the written document is unregistered. If there is no such document, or no system of law to enforce such easements, then the information costs could quickly exceed their value.

**Cultural and sacred sites**

Once again, the market value of a heritage site depends on what the market could use it for, subject to the legal restrictions in the relevant domain. Furthermore, there could be socio-cultural values attached to the properties which could supply significant economic and other benefits at the societal, or even national scale. For example, the Taj Mahal provides large economic benefits at the social scale which would be much higher than its value to an individual owner in terms of admission tickets etc. The most practicable approach to the value of a sacred tree or grove may be a values jury selected from amongst a similar population to those considering the tree to be sacred.

**Appendix 3 – Case Studies****Customary Land Rights Valuation Case Study, Part One: Challenges of Valuation of Unregistered Communal or Customary Land in Zimbabwe, By Dr Maxwell Mutema**

In Zimbabwe, while Communal Area (CA) landowners have secure user rights, a huge challenge is encountered when it comes to valuation. Land tenure in communal areas is a form of what is generally called customary land ownership or customary land rights in Africa. Traditional leadership (chiefs, headmen or their appointed representatives) are custodians of communal area land on behalf of the community. Local community individual households enjoy secure user rights as long as they remain members of their communities.

The user rights they enjoy include rights to grow food and annual crops, to grow perennial or permanent crops including plantation trees, to graze livestock, to harvest indigenous fruits, to fetch firewood, to cut trees for building poles, to bury the dead, to exclude outsiders and non-family members, to bequeath within the family lineage, and to fence, among others.

By law, communal area land cannot be sold. But despite this legal and policy position due to demand pressures from population increase, informal and illegal land sales often take place.

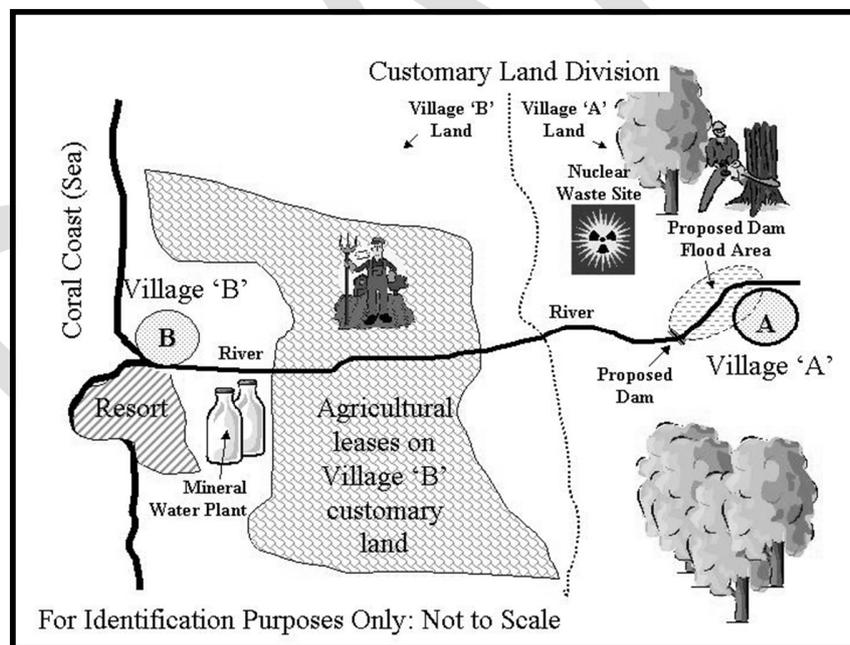
Except where compulsory acquisition has taken place, valuation of land in communal areas is next to non-existent. Where it is required there are number of challenges such as the absence of a recognised land market and comparable sales data, and the fact that communal area land is unregistered and not surveyed is accompanied by a perception that its ownership is associated with lack of security of tenure.

Legally, communal land is state land as its legal ownership is bestowed by the State President, thus in the event of compulsory acquisition, landowners can be compensated for the improvements they have made. In most cases the improvements in communal areas are too basic and minimal, typically they are pole and mud houses, grass thatched, and as such the value obtained will be very low. Yet, the real value of this land to people in the community is huge as most of the value is social value and community social network safety nets. The land in real terms is worth a lot more than the result of the valuation outcome.

Customary Land Rights Valuation Case Study, Part Two: Demystifying the Valuation of Customary Land (Source: Boydell 2015)

**The Scenario**

*This case study is based around a scenario for two villages in a hypothetical Pacific Island Nation that is confronted by many of the sustainable development challenges affecting Pacific SIDS (small island developing states).*



**Figure 1:** Schematic Plan of Subject Scenario

**Stakeholder Analysis**

*Our usual modus operandi for the above scenario is to undertake a stakeholder analysis of all issues and summarise them from the perspective of the three pillars of sustainability (Economic, Social and Environmental).*

The paper then set out a stakeholder analysis of three pillars of sustainability in a simple table format, with the stakeholders identified in the left column, and their stakes in the economic, social and environmental pillars of sustainability respectively in the three columns to the right. The paper then followed that analysis with a similar table, this one being an analysis of stakeholder property rights and interests, with associated valuation approaches. In this analysis, the three headings to the right articulate the relevant property rights in the next column to the right, with the other two columns articulating the landlord's and the tenant's interests respectively. After so doing, the paper concludes:

*Despite the apparent complexity of the hybrid scenario, there are no particularly complicated aspects associated with undertaking a valuation of the multiple overlapping property rights associated with the customary land. All of the valuation tools required are currently available. Once they have been identified and clarified, having a clear understanding of the property rights of respective parties makes the valuation process relatively straightforward. The skill of the valuer is required where judgements about risk and uncertainty have to be made, especially where, for example, there is political risk or climate risk associated with the property rights. It has to be remembered that when a valuer is commissioned to ascribe economic worth to the property rights of a particular rights holder, what is being paid for is a collection of professional judgements upon which a client, or clients, can then act, be it in sale, purchase, leasing, investment, development or compensation in the examples provided in the current scenario.*

*Where development initiatives impact on multiple parties, such as the dam and associated irrigation scheme, there is scope to value the respective interests of the parties synergistically. ... where we use option-pricing theory as a potential basis of valuation. A differentiation has to be made between the determination of 'market value' ... and a synergistic valuation as the basis of negotiation between customary landowners, the state and a mining company. Likewise, in the current scenario, the entrepreneur who wants to dam the gorge, produce hydro-power and irrigate farmland has a range of investment decisions running in parallel that will require feasibility studies, investment analysis and synergistic valuations that run far beyond the limitation of mere 'market value'.*

*Special Indigenous Value and solatium. ... the intangible dimensions of customary land have to be compensated where customary property rights are being extinguished, in the loss associated with the dam and associated flooding of Village A – or the acquisition of land for a nuclear waste facility - and this can (or should) result in a value for customary land that is higher than commoditised freehold land.*

#### Valuing in informal urban settlements

Just as the above case studies have highlighted nests of unregistered property rights in rural contexts, similar and other rights may be encountered in peri-urban, urban and formal land rights domains. Similar processes to those recommended may therefore apply.

A high proportion of the world's children are being born and raised throughout Asia, Africa, and Latin America's informal peri-urban areas. While they often look undifferentiated, there are real homes and communities in those areas there and they

trade. And when there is a shortage of space, markets and violence, or a combination thereof, have been our ways to address those shortages. The rule of land law is concerned with the rulers having a monopoly of violence to enforce its decisions, but trust in the market processes and between participants is what makes markets work, with state or other violence being only necessary when those processes are abused.

A valuer well-informed with the principles and practices of valuation and experienced in their engagement will thereby be aware of what is required to be considered an expert in such a market. That will be a result not only of guides such as this and the other resources here referenced, but also from professional experience in formal markets. Thus equipped, the valuer will know what comprises due diligence.

Imagine yourself to be such a valuer. You are leaving a market environment with technology that provides generally trustworthy information in seconds, but in this environment, you have to establish it for yourself? So, you must find trustworthy source, and if you find them you must establish yourself as worth their trust.

That will not be easy but may well be necessary. However, if you find parties to a market transaction that may be of interest to you as evidence, once you have established enough trust you will often find they are only too willing to unburden themselves by answering the questions (such as those in annexure one) whereby you can assess that transaction against the IVS market value definition. That is because a land transaction is usually the largest people make in their lives, and they are often as anxious to learn what should have been done as you are to know what was done.

Some people may attempt to deceive you: most, however, are honest. One transaction does not make a market, and you need to repeat the process several times before allowing yourself to value the feel for the market you gain through this process. Most likely, once you compile a sufficient body of evidence, the outliers will include liars, but also sales where one party or another did not meet the Market Value definition.

Record all your information and enter into information sharing relationships with trusted colleagues. Valuers know that their professional credibility depends not only on their own behaviour, but that of all their fellow valuers. Any betrayal of trust must end that valuer's career. A clear distinction must be drawn, however, between sharing evidence (permissible) and colluding in an estimate, which can ruin your reputation or send you to jail. The only reason you should survive in valuation is that clients can trust you to report to them without fear or favour to them or anyone else. The politics that may result from your information their concern, not yours. Yours is tough enough: to decide was makes the market the way it is, and what amounts to a sufficient compliance with the market value definition to be considered evidence within that particular market.

#### Unregistered Land Rights Valuation Case Studies, Part Four: Lessons learned:

To gain an understanding of the relevant land rights in a particular market, it is important to first identify and tabulate them, as recommended by Mutema and Boydell in their case studies above, and then reflect upon their interrelationships, their marketability, and the consequences of both. Additional to Annexure One, the questions posed by Namati (Appendix 4), or adaptations thereof for the particular market, may be relevant in assessing

whether or not a sufficient level of knowledge and prudence has been achieved by the parties. Similarly, suitable knowledge and prudence of the highest and best legal use of the land is to be considered for its sufficiency to meet the market value definition.

While they may need to be evidences in writing, albeit unregistered, that is a desirable but not necessarily preconditional for a land right to have value in unregistered market domains. However, writing along the lines of the template below is preconditional for your valuation. For example, there may be an exchange of produce between a farmer in a highland with a coastal fisherman, or a right to the produce of a fruit tree, even an orchard or the like of one party on the land of another. A household in a peri-urban area may have unwritten rights to produce of land from whence they came, with or without any current or future reciprocal obligations, and so on. When one party can no longer provide its part of the agreement, the other party may have to find that service elsewhere and enter a market to do so. The market value of that lost service can then become more apparent.

In scoping the market; to become an expert you must understand the big picture, not just unrelated atoms of evidence. Who and what are the market's main influencers? You may find property rights agents in the favelas of Rio de Janeiro, and Community Land Trusts: where else, and what else there and elsewhere? Does the local market have any realistic idea of the worth of their land if its highest and best user is not local? What is "proper marketing" there? How are the other components of the definition achieved? In many markets you will discover that the internet plays a large role. Are there any real estate agents? Do they have home pages, and where else do they advertise, and why? Local shopping notice boards, local newspapers? You cannot hold yourself out as an expert if you cannot replicate how sufficiently knowledgeable and prudent parties act in it.

Your valuation methodologies will depend on comparing that market's methodologies and approaches with those you had considered most appropriate to arrive at an assessment of economic worth for any particular property rights and interests. While traditional, formal, valuation methodologies are the most tried and true in formal markets, that does not mean that they are the ones that work there. What methodologies there does the market accept, and how likely are they to result in market value transactions?

Always, your processes must work from evidence to estimate, not the other way around.

## **Appendix 4 – Namati Questionnaire for Customary Landholders’ Due Diligence**

(Source: GLTN 1/2018. The valuation of Unregistered Land: A Policy Guide, Chapter 5, part 4.1)

### **DETERMINING THE VALUE TO OWNERS OF RURAL COMMUNAL LAND WITH NATURAL RESOURCES (NAMATI)**

An international non-government organization, Namati, has documented a valuation-related exercise to assist a customary community to be more knowledgeable about the value of their land to them (Knight, Brinkhurst and Vogelsang, 2016). The Knight et. al (2016) case study, described below in terms of steps, can be adapted for most rural communal land with resources. The exercise should be done as part of public meetings so that customary owners can gain an understanding of the monetary value of their land to them and make more informed decisions about potential sales. With respect to the valuer, if the amount estimated by the community exceeds, or is very different from, the amount estimated by the valuer, the valuer should consider his/her assumptions made concerning highest and best use and what ‘prudent’ means under these conditions. The difference in the amount might also be because of the additional values linked to the social market values.

With regard to the Namati experience, Knight et al. (2016) state that this list is only meant as a simple indicative guide, a preliminary step to negotiations with potential purchasers. To a professional valuer it may also be a step towards a capitalization of net income approach, common in land and location-related business valuations. However, additional aspects need to be considered in the valuation and compensation, such as the highest and best use of the land and matters that may be compensable under national law. Some useful lessons for valuers working with local organizations and para-valuers can also be drawn from the Namati experience:

- Capacity development of customary parties is likely to be essential.
- There are a wide range of market and social market value assets.
- Valuation can be done of unregistered customary land, but it may need innovative valuation methods.
- Special attention is needed to maintain IVS standards for market and social markets with regard to all aspects of the market value definition.
- Human rights international standards should form part of the ethical framework of the valuer, given the potential human rights abuses.

This example is merely an illustration for this guide of what could be involved in the valuation of unregistered land. Much more work needs to be done to produce manuals on how the different types of unregistered land in developing countries could be valued, drawing from the experience of valuers working in the field.

### **STEPS FOR CUSTOMARY LANDOWNERS TO DETERMINE THE VALUE OF THEIR LAND (NAMATI)**

Step 1: Generate a list of resources that community members get from the common land. Get community members to brainstorm all the main activities or uses, and all the natural resources that can be found on the land. Select the 7 to 10 most used resources that every household gathers daily or weekly.

Step 2: Determine the unit of measurement for each resource. To agree on a common unit of measurement (e.g. kilo or bundle), ask people how the resource is usually sold or bought in the market. Determine how many units are used by a typical family annually

Step 3: Estimate the total cost per year for the whole community, by finding out from the community how many families/households live in the community and use the common areas. This number is an estimate of the total cost for the entire community to replace the resources it currently gets from its common land. It should be a surprisingly large number – and it is likely still a low estimate because there are other resources and uses that are not included.

Step 4: Reflect. After completing these calculations, ask community members to envision what their lives would be like if they no longer had access to their community land; for example where they would get firewood, wild fruit and other resources, how they would earn money to buy items from the market, and whether, after knowing the value of what they get from the community land, they would consider selling or renting it, and at what price.

DRAFT

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