



# Catalyzing Innovation

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY  
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## **RESPONDING TO THE GLOBAL AGENDA: VALUATION OF UNDOCUMENTED LANDS TO PROMOTE RESPONSIBLE LAND GOVERNANCE AND HUMAN RIGHTS RECOGNITION**

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## **ABSTRACT**

Challenges of the 21<sup>st</sup> century in terms of climate change, urbanization, disaster prevention and increased demand for land calls for integrated land governance. The role of land in the achievement of key developments has been emphasized in the 2030 Agenda on the Sustainable Development Goals and other global instruments like the Voluntary Guidelines on the Responsible Governance of Tenure and regional mechanisms such as the African Union Land Policy Initiative's framework and Guidelines. On the other hand, government's role is changing from a hands-on management to facilitator of an enabling environment and framework for stakeholder participation which points to responsible land governance while at same time upholding human rights considerations. Valuation of un-documented land is relevant in responding to the global call on land, ensuring its responsible governance and upholding of human rights especially considering that most land in undeveloped countries is un documented

## **Key Words:**

International valuation standards, social market values, sustainable development, un-documented lands.



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## 1. INTRODUCTION

The need to be able to value un-documented land is intensifying. Population growth and urban growth rates are increasing the pressure on land and the risk of evictions. More urban and rural development projects are coming on line that need land acquisition, fair resettlement and compensation. Linked to the globalization of the land and property markets, large-scale land-based investments for food and bio-fuels are on the rise impacting rural communities, many of whom are poor. As a result of conflict, the international community is currently managing the largest number of displaced people ever recorded globally since the United Nations refugee agency (UNHCR) was created in 1950, all of whom need land for shelter and/or livelihoods.

This paper is based on the policy guide; ‘Valuation of unregistered land’, by the Global Land Tool Network (GLTN), UN-Habitat as a fit-for-purpose land related tool that is pro-poor and gender responsive. It is developed from the international recognition of the Global Land Tool Networks’ continuum of land rights that describes a range of land rights (e.g. formal, informal, customary), where registered land is just one of many rights.

Valuation is necessary to improve planning and control over land and property in a way that builds equitable access to financial services and mobilizes resources for economic growth and poverty reduction. It is critical to upgrade informal settlements, support the resettlement of displaced people and for investment and development projects. It is vital for improving transparency in opaque land markets, which typically disadvantage the poor.

The land of the poor, who are a key focus of the SDGs, generally forms part of the seventy percent of un-documented land rights and claims in developing countries. Frequently, the poor are not able to realistically calculate the cost to them of compulsory acquisition and resettlement or determine the market value of selling and leasing their resources and assets to others. They cannot afford the cost of a traditional valuation. In matters of fair payment and compensation for resettlement, poor people’s rights are at risk of being eroded or lost through the behavior of unscrupulous officials, traders and investors. Without a clear methodology for valuing their land and establishing compensation poor occupants may lose out on getting the market value for their land and this would entrench poverty even further in their lives.



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## 1.1 SUSTAINABLE DEVELOPMENT GOALS (SDGS)

The Sustainable Development Goals (United Nations, 2015) cover land from a number of angles: Under Goal 1 on poverty, Target 1.4 refers to the need for ownership and control over land and natural resources. Indicator 1.4.2 calls for governments to report on the proportion of adult population with secure tenure rights as well as with recognized documentation to land. Under Goal 2 on food security, Target 2.3 refers to the need for secure tenure and access to land. While Goal 5 on gender, Target 5a, refers to the need for ownership and control over land, Goal 10 focuses on the reduction of inequalities (inequality in land is common). Goal 11 on urban inclusivity, safety and resilience, Target 11.1 refers to the need for adequate housing and the upgrading of slums (which requires land). Goal 15 on sustainable ecosystems, Target 15.3 refers to the need to restore degraded land. Goal 16 on peaceful societies, Target 16.3 refers to the need for the rule of law (land as a root cause of conflict can be a key rule of law issue).

These SDG goals reflect both the objectives of valuing un-documented land and challenges that are addressed with fair valuations. Professional standard valuations are critical to achieve these goals in an equitable, efficient and effective manner.

## 1.2 NEW URBAN AGENDA (NUA)

Applicable NUA principles for the purposes of land are about: leaving no one behind; ending poverty in all its forms; ensuring equal rights; socio-economic and cultural diversity; integration in the urban space and eliminating discrimination and all forms of violence; ensuring public participation; and providing equal access to physical and social infrastructure and basic services as well as adequate and affordable housing.

For the first time in human history, more than half the world's population live in cities and "the world can expect to add close to 1.5 billion urbanites in the next 15 years, and 3 billion by 2050" (UNFPA, 2016). Most of these people will probably move to un-documented land in slum areas and the New Urban Agenda (NUA) is intended to address this emerging urban reality. Estimates of the cost of its implementation run into tens of trillions of dollars and will require land valuation-related strategies for un-documented land.

The NUA also gives direction on how to tackle urban development and specifically identifies that valuation, frameworks, tools and methods are needed for slum upgrading; city extensions and land readjustment; appropriate data sets for urban management; both documented and un-documented land; assessing value capture before development projects; leasing of public land and properties; and densification to address urban sprawl among other things.



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## **1.3 VOLUNTARY GUIDELINES ON THE GOVERNANCE OF TENURE OF LAND, FISHERIES AND FORESTS IN THE CONTEXT OF NATIONAL FOOD SECURITY (VGGT)**

The General Principles of the VGGTs directs States to recognize all legitimate tenure right holders and their rights whether formally recorded or not (FAO, 2012). They also recommend that non-state actors should have a responsibility to respect human rights and legitimate tenure rights. They should also include appropriate risk management systems to prevent and address adverse impacts on human rights and legitimate tenure rights in areas of their involvement.

Regarding compensation, the VGGTs in Article 16 directs States to provide prompt and just compensation where tenure rights are taken for public purposes, respect all legitimate tenure right holders and ensure a fair valuation and prompt compensation in accordance with national law. Article 18 of the VGGTs directs States to ensure appropriate systems are used for the fair valuation of tenure rights for specific purposes, policies and laws that ensure valuation systems take into account non-market values (social, cultural, religious, spiritual and environmental) where applicable. Likewise, transparency in valuing tenure rights, publicizing national standards for valuation which should be consistent with relevant international standards and training of staff in methodologies and international standards are encouraged.

The VGGT principles, overall guidance and specific guidance on compensation and valuation is a key framework for the valuation of un-documented land.

## **1.4 AFRICAN UNION, UNECA AND AFRICAN DEVELOPMENT BANK LAND POLICY INITIATIVE FRAMEWORK AND GUIDELINES**

The Framework and Guidelines (2010) on Land Policy is a joint product of the African Union Commission (AUC), the UN Economic Commission for Africa (ECA) and the African Development Bank (AfDB). The inter-governmental regional land policy is an important international standard because most of the Africa's land is un-documented, and the socio-cultural factor of land is vital.

While valuation is not specifically mentioned in this report, issues that will require the valuation of land are mentioned. It identifies global trends impacting Africa including climate change and rising sea levels that will require relocation of populations, innovative land use planning leading to massive land acquisitions accompanied by large scale infrastructure and service delivery. It also notes the scramble for Africa's land resources in regard to timber, tourism, commercial development and food production for consumption abroad.

A technical guide produced by the partnership "Guiding principles on Large Scale Land Based Investments in Africa" (AU, AfDB and UNECA, 2014) is based on a broad range of human rights declarations and



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conventions. Fundamental Principles are identified in the LSLBI guide that inform valuation of land. It calls for respect of human rights of communities and decisions made based on holistic assessment of the economic, financial, social and environmental costs and benefits associated with the proposed investment. Valuation of land is in the critical path of the implementation of such assessments.

The LSBLI guide also calls for proper valuation of land to discourage excessive land acquisition, appropriate compensation which includes compensation for secondary rights over land. It also calls for capacity development to be able to better negotiate benefits, compensation and other terms of agreements, during LSLBI. Again, the capacity to value land is key for all these stakeholders.

## **1.5 WORLD BANK SAFE GUARDS**

The World Bank is the process of updating its safeguards and their new policy ‘The World Bank Environmental and Social Framework’ (2017) will be fully implemented in 2018. It has a special section on Land Acquisition, Restrictions on Land Use and Involuntary Resettlement, where one of its objectives is to “mitigate unavoidable adverse social and economic impacts from land acquisition or restrictions on land use by ...providing timely compensation for loss of assets at replacement cost.” It then goes on to describe replacement cost and the valuation method that will be used where there is a land market or no land market. This is quoted at length in Part 4. as it speaks directly to some of the purposes of this guide. Other International Finance Institutions, such as the International Fund for Agricultural Development and the International Finance Corporation also have safeguards.

## **1.6 INTERNATIONAL VALUATION STANDARDS 2017**

The International Valuations Council (IVSC) has produced International Valuations Standards 2017. These give mandatory requirements of International Valuation Standards approved by the IVSC Standards Board applicable from 1 July 2017. They have relevance to procedures when valuing land whether documented or un-documented. It should be regarded as mandatory for any valuer of land.

The International Accounting Standards definition of ‘Fair Value’ is now practically the same as the IVSC definition of ‘market value. The International Financial Reporting Standard 13 defines ‘Fair Value’ as “the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date.”

## **1.7 FAO TECHNICAL GUIDE ON GOVERNANCE AND VALUATION**

FAO’s technical guide on valuing land 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



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(2017) covers all legitimate land rights including documented and un-documented land. The technical guide covers the issues associated with the identification and valuation of tenure rights for different purposes and provides guidance on how to ensure that valuations are undertaken in a fair, reliable and transparent manner that comply with international norms.

The guide explains seeks to raise the level of awareness of valuation issues and procedures among those involved in land policy and administration and those affected by land tenure decisions. Although it focuses on land, it provides useful guidance that can be used for fisheries, forests and other natural resources. It is primarily directed towards developing countries and countries in transition where there is less awareness of the valuation profession and institutions.

## 1.8 WHAT IS UN-DOCUMENTED LAND?

Un-documented land is generally land where land rights have not been formally recorded in the government land registration system at all. The process of creating a registered right, and the legal and administrative processes undertaken for all the subsequent transactions, mean that the legal evidence in the form of information is considered certain, increasing predictability and reducing risk. Valuers use the registered land title-deeds legal evidence, including the planning and building data, and its certain information as a key part of their valuation research and as part of their ethical framework.

Generally un-documented land has not been alienated from the state, adjudicated and a registered title deed created, with or without a cadastral survey. Sometimes some of the first paper work may have been done but the technical process has not been completed through to the registered right. Rights are uncertain and often overlapping.

In cases where the *de facto* situation on the ground does not match the registered land rights this is also termed 'un-documented land'. This situation usually relates to incomplete technical processes, either during the alienation of state land or in subsequent transactions or where there are significant non-compliant land uses and buildings. There is a wide range of other un-documented land types and rights. These include land with legal but un-documented land rights; land with extra-legal but legitimate land rights; land with legal but illegitimate land rights and land with illegal and illegitimate land claims. It is possible to find these in both formal and informal land markets.

## 1.9 RESPONSIBLE LAND GOVERNANCE

According to Zevenbergen, De Vries & Bennett (2016) to be "responsible" means the need to be involved in building collaborative relationships with citizens and groups of citizens, encouraging shared



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responsibilities and disseminating information to elevate public discourse and foster shared understanding of public issues in government activities. The element of responsibility adds a new notion to conventional approaches of governance and aligns the everchanging needs and capabilities of individuals, government and society. In this case therefore, responsible land governance will thus impact governance of un-documented land through involvement of the rights owners for improved management of their land. With majority of land owners in developing countries having un-documented land, their involvement enhances increased inclusivity on decisions during land governance.

The editors in the book on 'Advances in Responsible Land Administration' also refer to the FAO VGGTs where 'responsible' is an attribute encompassing socio-economic development, poverty eradication and food insecurity. It is a governance that recognizes inherent human dignity and equal and inalienable rights of all individuals by acknowledging differences between individuals and taking positive action to promote equitable rights, ensuing rights of women and men, prioritizing holistic and sustainable approaches, works on the basis of consultation and participation, adopts approaches that are transparent, rule based and applicable for all; and aims for continuous improvement strategies by monitoring, analysis and evidence

The principle of 'responsibility' is deemed to relate to a collection of practices on land including undocumented land as follows:

1. Multi-stakeholder focus: Acknowledges the representation of relevant stakeholders in the development of land policies and systems. These may include both the formal land right holders and non-documented yet legitimate land tenure holders.
2. Multidisciplinary: Uses and adopts insights from multiple disciplines and connects innovation from technical and informal sciences to the social sciences and humanities
3. Proactive: Ethical and societal aspects are incorporated into the design process from the start
4. International: Research has an international focus and takes the global context into consideration.
5. Relevant and usable: Research development will be considered in terms of societal relevance and practicality of implementing the knowledge

These practices are consistent with those required of professional valuers

## **1.10 HUMAN RIGHTS AND VALUATION OF UN-DOCUMENTED LAND**

The world has set goals and developed human rights and international standards to address current global challenges. Valuation of un-documented land is aligned with the human rights principles embodied in



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international standards. These international human rights standards recommend that land un-documented rights should be treated the same as documented land rights. Countries are encouraged to review these international standards and to domesticate these principles in their legal and regulatory frameworks.

The Sustainable Development Goals (SDGs) with its focus on ‘leaving no one behind’, the Universal Declaration of Human Rights (UDHR) together with the Human Rights Council General Comments, the NUA and VGGT principles, outlined below, are the main human rights frameworks used as a basis for policy for the valuation of un-documented land. All of them, except for the UDHR, are also geared to un-documented land. They frame the challenges and underpins the valuation goals, principles, frameworks, tools and methods that are proposed for the valuation of un-documented land.

The human rights standards are also used in designing frameworks for valuation standards including ethics, due diligence, valuation methods, market/social market value compensation packages, protection of the poor, to assess market standards, for determining the real ‘owner’ of the land and the status of owners, occupants, users and claimants, and to strengthen human rights approaches for expropriation and involuntary resettlement and to avoid forced evictions and other human rights abuses.

The standards are used to set goals for countries to improve their land valuations including the achievement of the SDG goals. Countries should also work to achieve national valuation standards that follow international standards; valuation of un-documented land using valuation methods which take into account a wide range of issues, values linked to social, cultural, religious, spiritual and environmental aspects. They should link IVS compliant valuations which are adapted for the social market with fair payment and compensation packages and regulating this for business enterprises, support inclusive sustainable urbanization linked to better value capture and land use management and develop information for valuation and improved transparency.

## **1.11 VALUATION AND THE CONTINUUM OF LAND RIGHTS**

Land tenure is frequently understood in binary terms: formal/informal, legal/extra-legal, secure/insecure, de facto/de jure. However, in practice a wide and complex spectrum of appropriate, legitimate tenure arrangements exists between these extremities. Recognition of this important reality has been part of a global paradigm shift on tenure that has taken place over the past decade, in large part through work done by GLTN and its partners, as formulated in the continuum of land rights. The continuum of land rights is a key framework for valuers to understand un-documented land as an aid to their valuation analysis and to understand its impact to enhance tenure security.

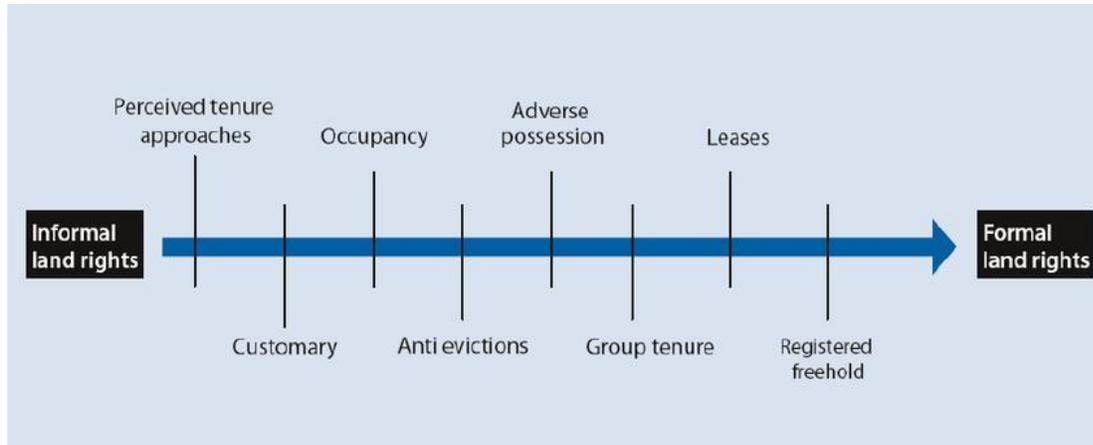


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Diagram 1. Continuum of land rights (UN-Habitat/GLTN, 2015)



The continuum of land rights is a concept or metaphor for understanding and administering the rich complexity of land rights on the ground. The rights along the continuum can be documented as well as undocumented, formal as well as informal, for individuals as well as groups, including pastoralists, and residents of slums and other settlements, which may be legal or extra-legal. The rights may overlap. Documented freehold is one of a number of appropriate and legitimate forms (customary, leasehold, group tenure, others). The most appropriate form/s depends on context.

In terms of practical implementation, a continuum of land rights can be said to have been fully implemented in a particular context once: (a) the full spectrum of formal, informal and customary rights are catered for within the land information management system; and (b) the full range of rights constitutes legally enforceable claims which can be asserted and defended in a forum such as a court. To get to this situation it would be necessary to develop a regulatory environment, as well as set up the necessary administration and land records systems. In addition, it would be necessary to develop and test innovative implementation tools to fill the land recordation and many other gaps currently existing in conventional land administration, and to roll these out at country level. Successful application of the continuum of land rights depends on existing contextual challenges and opportunities, and the application of innovative land tools, at scale.

Elements of the continuum of land rights in practice can be found in many contexts. Research by GLTN in Southern Africa (Malawi, Namibia, Angola, Mozambique and South Africa) has found compelling evidence of elements of the continuum of land rights existing in practice. These include witnessed rights to land; locally documented rights to land (security via social legitimacy); familial / marital rights to land; administratively documented rights to land (security via official recognition); Occupation rights / permission to occupy; customary land rights; group rights to land; *De facto* rights of possession; various



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forms of leasehold and individual private ownership / freehold.

Valuers can use the continuum of land rights to better understand what is happening on the ground in undocumented land. It confirms that land tenure relationships are social, complex and overlapping. They can and do change over time especially in situations where valuers often work such as big development projects, the development of cash crops and urban densification and extensions.

## 1.12 METHODOLOGY

Existing literature on valuation mainly focuses on registered land. Literature review thus draws on extensive work available on the valuation of registered land as markets and examples of market transactions fitting the definition of market value which can also be found on unregistered land and on the principles of valuation for payment for people whose land and property rights have been taken from them with the most valuable component of that payment usually being the market value of the land and improvements. Literature review also draws from valuation manuals, tools and courses, the most important references being the International Valuation Standards (IVS) Council standards, glossary, code of ethics, and FIG's Compulsory Purchase and Compensation: Recommendations for Good Practice (Viitanen, Falkenbach and Nuuja: 2010).

This paper is developed from the policy guide by the Global Land Tool Network, UN-Habitat on "Valuation of unregistered land" as a fit-for-purpose land tools that is pro-poor and gender sensitive (UN-Habitat, 2018). The guide largely extrapolates from work on the valuation of registered land and applies it to the valuation of unregistered land. It also draws on the small number of publications on unregistered including the Royal Institution of Chartered Surveyors report on Valuing Unregistered Land (2018) and Food and Agricultural Organization publication on Valuing Land Tenure Rights (2017). The paper also draws from Expert Group Meetings and session held during conferences and working weeks consisting of expert practitioners, academic representatives and affected stakeholders in the valuation of unregistered land and properties as well as various reviews and inputs from reviewers drawn from the valuation profession on the subject. valuation research by Royal institution of Chartered Surveyors (RICS) who are GLTN partners, Expert Group meetings (EGM) consisting practitioners, academic representatives and affected stakeholder in the valuation of unregistered land and properties, sessions during World Bank Land Conferences and sessions on Valuations of Unregistered Lands during FIG Congress and Workings Weeks.



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## **2. CHALLENGES WHEN VALUING UN-DOCUMENTED LAND**

### **2.1 INSUFFICIENT TRAINED AND/OR REGULATED VALUERS**

Many developing countries' land and property markets are immature. These countries' growth is retarded by the lack of legal, financial, valuation, land brokering and land or property management skills. The key skills shortage is often in valuation, brokerage and land and property management. This is often linked to the lack of proper or meaningful regulation of valuers, brokerage and property management. This allows virtually anyone to provide these services. The skills have not developed because there is no market, but the market's growth is limited due to the lack of qualified property professionals (McDermott, 2012).

Outdated or a lack of any national standards can also have an impact. The adoption of IVS by either government regulators or by local professional associations has been slow. Often, they are used even if they are not adopted in statute. Sometimes those that have adopted the IVS standards lack the structure to educate valuers on how to meet them and, more importantly, to enforce valuers to comply with them. All of this impacts the valuation of un-documented land.

### **2.2 LAND MARKET CHALLENGES**

There can be excessive government interference or insufficient government intervention within a land market which limit the land market's efficiency. Excessive or insufficient government involvement includes failure to provide a legal / administrative framework conducive to an efficient and transparent land market; weak governance linked to corrupt practices at the level of the institution and/or individuals; and inadequate monitoring, evaluation and enforcement of policies, laws and administration.

Other market related challenges are linked to markets that are not mature, are small, volatile, corrupt or risky because of crime or armed conflict. Markets with un-documented lands can be any of these. They may also be geographically remote increasing the cost of the valuation. They may have small populations. They may be part of the poorest sector of society where local incomes are insufficient to pay for an IVS compliant valuation including its adaption for the social market or may be inactive.

Real estate market volatilities are caused by internal (within the country) or external (outside the country) forces. Internal forces include political instability, land title disputes, poor enforcement of land rights, lack of market infrastructure, and unstable monetary policy. External forces may also have substantial impacts on local markets. The global financial crisis affected many markets across the globe. Wars and other crises in Africa, the Middle East, Asia, and South America affected the land and property markets in those areas. Other external forces may be refugee crises and trade embargos etc.



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## **2.3 EXTERNAL PRESSURES**

People and organizations often try to pressure valuers to give valuations that would suit their circumstances. This is true for developed and mature markets as well as for small less developed markets. External pressures on valuers can be from land and property owners, government officials, or others with a financial or personal stake based on the value outcome.

Within the public sector, a government may pressure valuers (either staff or private valuers) when undertaking compulsory purchase of land and buildings to have low values to make it subject to budget allowances, or to save money, rather than subject to legal requirements. Government officials may also pressure valuers to give higher values of land and buildings owned by friends or family, or possibly because of rent seeking from land-owners. Given that un-documented land tends to be outside of a regulated land market setting issues of external pressure can be more common. Valuers need to be especially vigilant about maintaining IVS standards and ethics.

## **2.4 LEGAL AND REGULATORY FRAMEWORK ISSUES**

The legal framework is foundational to the effectiveness of a real estate market. Firstly, it is about how the land is defined and documented, or in this case not documented. Secondly, it is about the legal system itself and how the land rights are created, and the rights enforced. This is a key challenge in un-documented land. Often the legal framework is unclear about un-documented land and the land rights are often imprecise, unwritten, with different interpretations between affected parties, and have indecisive dispute resolution methods.

Some of the challenges include: poor or inadequate legal and regulatory frameworks that affect the efficient functioning of the land market; legal and regulatory framework that is only applied by government to documented land which may require review/re-interpretation to apply to land; inefficient legal structure such as for example long delays in court; introduction of a new legal structure; non-personal ownership, (for example communal ownership) and lack of faith in the legal system that issues will be resolved in a fair and prompt manner. Also, many countries have plural legal systems. Here even though a legal and regulatory framework is in place it can be contested, when there are conflicts between the statutory land and property laws and customary law and practice, including religious law.

## **2.5 INABILITY TO OBTAIN COMPARABLE EVIDENCE**

Nzioki, Swazuri, Tracy-White & Yahaya, 2013 identify various potential challenges/ barriers to the work of a valuer when valuing un-documented land which include: determining the real 'owner' of the land rights



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to be valued and lack of documents; determining boundaries and size of land; hostile land occupants; and uncertain information, information asymmetry, lack of transparency of information.

They go further to outline impacts on the markets from lack of published information, or difficulty in obtaining information, regarding transactions and the other types of data typically used in proper accurate valuations. These impacts include greater volatility of land markets; two-tier markets; suspicious land transfers; unreliable sources of information; non-monetary means of transactions; lack of transparency and volatility in the business community.



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## **3. BUILDING THE FRAMEWORK FOR VALUING UNDOCUMENTED LANDS**

This part outlines a comprehensive practical framework for policy makers and practitioners for improving the efficiency of the market; and to support the valuation industry to value un-documented land in developing countries.

### **3.1 GLOBAL STANDARD VALUATION AND THE IVSC FRAMEWORK**

The International Valuation Standards Council (IVSC) is an independent, not-for-profit organization that produces and implements universally accepted standards for the valuation of assets across the world in the public interest. While the focus of the IVSC is on the formal market, many of the standards are universal. The feasibility of obtaining an accurate valuation of un-documented lands using standard valuation procedures will vary greatly with circumstances. However, it remains relevant to describe the standard procedure, as this process should be the first recourse of the valuer of un-documented land and provide the framing for any additional processes applied.

The IVS framework includes generally accepted valuation concepts, principles and definitions for IVSC compliant valuations. Some of the items the valuer should review are judgment, objectivity, competence, cost and value, markets and market activities, basis of value, market value, transaction costs, and valuation methods. All of these are described in more detail and their application in un-documented land.

### **3.2 THE SOCIAL, CULTURAL, RELIGIOUS, SPIRITUAL AND ENVIRONMENTAL ASPECT OF VALUATION**

The World Business Council for Sustainable Development supports valuing social, cultural, religious, spiritual and environmental assets. The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security state that “Policies and laws related to valuation should strive to ensure that valuation systems take into account non-market values, such as social, cultural, religious, spiritual and environmental values where applicable” (FAO, 2012).

There are a number of reasons why the socio-cultural, religious, spiritual and environmental issue is important for valuers especially for un-documented land: 1) to ensure that owners received adequate compensation 2) existence of plural legal systems in regard to land; 3) existence of customary or indigenous territory where social, cultural and spiritual values are often important. 4) Islamic inheritance systems, with its shared land rights, and Islamic *awaqf* or religious land, covers large areas of land not just in Muslim majority countries; 5) A sacred value can be placed on land and linked to religious and ethnic identity and people can resist trading their sacred values in exchange for material benefits (Berns, Bell, Capra, Prietula, Moore, Underson, Ginges & Atran. 2012).



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## 3.2.1 WHAT IT MEANS FOR VALUERS

The valuer working in un-documented land where social, cultural, spiritual and environmental aspects exist needs to apply the adapted IVS definition of market/social market value. If such values are not reflected in the relevant market's values, then in cases of expropriation compensation under the heading of solatium may be required to meet the VGGT recommendations. The valuer's report needs to adequately describe the why, how and what they did within the context of the assignment. Valuers need to know how to value the land considering socio-cultural value but understanding the wider political economy dynamics.

## 3.3 ADAPTING EXISTING VALUATION METHODS TO UN-DOCUMENTED LAND

Valuers should apply valuation methods used for valuing documented land and adapt them for un-documented land. Depending on the circumstances, including the scale and complexity of the valuation problem, this should always take the form of the application of standard international valuation principles, practices, and protocols as adapted to the local market circumstances, including the social market. The typical principles and practices of valuation might apply everywhere, or some might apply only in certain circumstances. All aspects of the valuation of un-documented land need to be considered within the framework of the national laws and regulations of each country.

When adopting more innovative methods, they should meet the IVS standards adapted to include the social market, not be misleading, and comply with all the relevant local laws. If the laws do not cover un-documented land the valuer should adapt them to un-documented land as appropriate. Innovative applications or techniques can be formally and informally peer reviewed through better networking by practitioners, through academic networks, web sites and chat rooms. This is covered in more detail in chapter 4 below.

## 3.4 UNDERSTANDING VALUE AND HOW IT APPLIES TO UN-DOCUMENTED LAND

The valuer working with market/social market value should recognize the difference that lies behind the pricing mechanisms and patterns of prices in competitive markets by comparison to thin markets, such as is often found in un-documented land, and adjust their sales analysis and valuation methods accordingly.

### 3.4.1 MARKET VALUE

Estimating value is complex and there is no one-size-fits-all method particularly for un-documented land. The first step for a valuer is to investigate the circumstances of sales of land similar to that being valued, to see how well those sales comply with the adapted IVS definition of market/social market value, as well as other market/social market data upon which value rests and compare all of the relevant data to the intended



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use and users of the analysis. If there is no market/social market evidence, or the data is not relevant, the valuer should investigate similar markets/social markets elsewhere.

## 3.4.2 BASIS OF VALUE

A professional valuation of un-documented lands should state the type and definition of value and cite the source of the definition. The most commonly used basis of value is market value and the IVS definition, which is based on the most probable price in a free and open market. Valuations of un-documented land are often used in determining compensation packages, which should include the social market aspects. The definition of value will probably be set by local laws. Also, where multi-lateral funding is involved, such as international development banks, the valuer will probably be required to apply an appropriate definition of value in terms of their safeguard policies.

## 3.5. MARKET ACTIVITY

Markets, including social markets, are dynamic processes. Market/social market activity relates to the degree of market/social market activity and how much any market/social market fluctuates. Sometimes values remain stable over long periods of time, but then particular situations may cause substantial changes in value. The announcement of a new public project can increase or decrease land values. A political situation or a war can cause a reduction in market value, including in social market value such as for example around identity politics. This also applies in un-documented land.

## 3.6 MARKET PARTICIPANTS

These are the whole body of individuals, companies or other entities involved in land and property transactions or who are contemplating entering into a transaction. The market/social market is where buyers and sellers complete their trade, and this is also common in un-documented land. These markets/social markets are often opaque and there is little government information on individual land and transactions. Transactions are completed through brokers, elders and family members, private conveyancers, middlemen, community leaders and others. Experience shows that once trust is established parties to a sale are often willing to answer these questions relating to market/ social value, assets being exchanged; the valuation date; whether the transaction is between a willing buyer and a willing seller In an arm's length transaction; proper marketing was done and wherein the parties had each acted knowledgeably, prudently and without compulsion.

## 3.7 ETHICAL STANDARDS

The International Valuation Standards Council (IVSC) has a Code of Ethical Principles for Professional Valuers for valuers worldwide. The code is of special importance in the context of valuing un-documented



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land because it “is fundamental to the integrity of the valuation process that those who rely on valuations have confidence that those valuations are provided by valuers who have the appropriate experience, skill and judgment, who act in a professional manner and who exercise their judgment free from any undue influence or bias” (IVSC, 2011). The Code provides five fundamental principles on integrity; objectivity; competence; confidentiality and professional behavior. Likewise, human rights international standards should be followed to avoid human rights abuses.

Where feasible a single institute for valuers should be set up and be recognized by government. The membership of the institute should be under the control of valuers who have the highest ethical and professional standards. The institute should address and enforce non-compliance with IVS standards.

### **3.8 STANDARDS, COMPETENCE AND SKILLS**

The IVSC states that “institutions with regulatory functions over the valuation profession should ensure adequate opportunity for its development as this profession is central to the proper functioning of the property market and by extension the economy” (IVSC, 2001). This also applies to the other land and property professionals such as agents / brokers, counselors / advisors and land and property managers.

A valuer from the immediate area who regularly deals with transactions should be the most qualified. However, sometimes the land type is unique to that area and the local valuer has no experience in valuing such a land and property type. A valuer from a major international city with extensive experience valuing five-star resorts will have the experience and knowledge but lacks the geographic competency of the local remote island. When valuing un-documented lands, and particularly large multi-property projects, external valuation experts may need to work with local valuers to provide the appropriate expertise and knowledge.

### **3.9 ENSURING GENDER EQUITY DURING VALUATION**

As the IVS definition of market value is gender-neutral, the GLTN Gender Evaluation Criteria with its emphasis on equal participation by women and men can be adapted in property markets and used as a framework by valuers for their work. It recommends that valuation should encourage land markets that are fair and affordable to both women and men and promote innovation in economic models to favor women’s benefit from land in situations where the socio-cultural context disadvantages women.

The valuer using the adapted IVS definition of market/social market value needs to take the factors regarding ‘willing buyer and willing seller’, ‘each acting knowledgeably prudently and without compulsion’, when analyzing sales and other market data. Gender inequality should not impact the market valuation when following the adapted IVS standards. The prudent valuer should examine the available data



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for any evidence that such inequality has affected the comparable dataset. Training of valuers in gender aspects might be required to ensure that valuers are following IVS standards and not incorrectly and unethically perpetuating gender inequality in their valuations and within their markets.

## 3.10 CAPACITY DEVELOPMENT APPROACHES

Valuers nowadays, including those working in developing countries, need more than technical skills. Real estate education at the tertiary level is too often narrowly focused around business/finance/economics (e.g. in the United States of America); or engineering/architecture and the physical aspects of property (e.g. in the United Kingdom). Valuers need be more well-rounded beyond just technical competence and to understand economic and environmental development trends and their link to valuation.

To value un-documented land they will also need to have a broader range of skills including how to: apply global frameworks that impact valuation such as the SDGs, VGGTs, NUA and international development bank safeguards, as well as other human rights instruments; give guidance on balanced large-scale land based investments to national government, local authorities and communities; give guidance for city extensions, urban redevelopment and slum upgrading; give guidance in areas with environmental issues such as in regard to natural resources and potential land degradation among other things; link with the global industry and information. Local valuers use an IVS adapted market/social market value definition; do special capacity development targeted toward women and gender equality to ensure that they are following IVS standards; work in a participatory manner and undertake fit for purpose valuations that cover the majority of the land market including documented and un-documented.

A broad range of national institutional strengthening is needed in strengthening valuation policy, law, regulations and institutional frameworks over time including for un-documented land. Likewise is the domestication of international standards, government involvement in strengthening national valuation industry through the law; developing the necessary skills and competencies within government and within the education and training sector, change and modernization of national valuation systems. Fit for purpose approaches that will incrementally improve formal valuer qualifications are needed and agents/brokers, property managers and other land professionals should be able to apply for professional valuer recognition and be accredited/licensed through what is known as a 'grandfather clause'. Lastly partnerships between international valuers, local valuers and para-valuers could be key to capacity development.



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## 4. IMPLEMENTATION

### 4.1 ESTABLISHED METHODS OF VALUATION

#### 4.1.1 THE DIRECT COMPARISON METHOD

A key principle of practice is to compare like with like. The closer any sales evidence is the better in terms of its: highest and best use, social, geological, geographic, available services and amenities, existing or potential title and tenure and other market-relevant characteristics, as well as reasonable terms and conditions of sale by the standards of the market concerned. In all cases the closer the circumstances of the sale are to complying with the adapted IVS market/social market value definition the better. In practice only, if it meets the market value definition's requirements a recent sale of the land or property itself is a near perfect comparison. The valuer is therefore always dealing with degrees of comparability on many different fronts. For this reason, depending on the sufficiency of evidence available, no sale should be automatically rejected before its circumstances and specifics are known. While this method is used extensively in documented land, it has applicability in un-documented land. However, in un-documented land it is likely to be much more difficult to get the evidence showing comparability particularly as there are no public records of the land plot.

#### 4.1.2 THE CAPITALIZATION OF RENTAL VALUES

It is possible to lease unimproved vacant land or buildings and land together and capitalize the income on a gross or net basis to arrive at a value. For example, if there is a rental agreement over land, which the valuer's investigations show are relatively similar to the subject land rent potential and in accordance with the adapted IVS market/social market value definition, the rental could be capitalized at a gross or net basis, depending on how the market works. While this method is used extensively in documented land, especially for improved commercial properties and productive farm-land, it has applicability in un-documented land especially if there is information on income, capitalization rates and expenses.

#### 4.1.3 HYPOTHETICAL DEVELOPMENT APPROACH

This approach is used to value land or property that is not being used to its highest and best use. It is done by estimating what the land would be worth if it was used at its highest and best use, deducting all the costs involved to achieve this. Also, this assumes adequate support to what the value of the land or property is after it has achieved its highest and best use, likely through the application of other approaches to value. Depending on the market concerned, nowadays this approach is often analyzed using a Discounted Cash Flow (DCF) approach. The hypothetical development approach is often used for compulsory purchase for un-documented land particularly by government agencies to budget for developments prior to any



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compulsory land acquisition. However, DCF and hypothetical development-based valuations must be carefully scrutinized, as small variations in the assumptions entered may have major effects on the consequent conclusions.

Other established methods that could be used include the Summation method which assumes that other valuation methods have been used to accurately value the individual components of the greater land and buildings with the greater land and buildings being the whole or sum of the parts; the residual approach which can be used to analyze large-scale sale transactions or mixed-use properties and the Depreciated Replacement Cost which is about the current replacement cost. In all approaches, sales evidence (that is, sales where the circumstances have been found to meet the market value definition) remains the most persuasive.

## **4.2 INNOVATIVE APPROACHES TO VALUATIONS**

To strengthen valuation reports of un-documented land, community perceptions, local practices and expectations based on local knowledge could be used. These alternative methods could be applied when valuing un-documented land depending on specific market, the scale of the assignment, and the quality and quantity of the evidence needed to support a reliable value conclusion by more traditional methods.

### **4.2.1 MOOTS**

Moots are facsimiles of court proceedings that have been developed and refined through centuries of experience within the legal profession. They may be seen as an extension of a valuer's normal practice of interviewing willing buyers and willing sellers to determine if they meet the criteria stated in the IVS definition. In particular, such parties represent the willing buyers and sellers competent to meet the standards of the adapted IVS market/social market value definition in the market under consideration. They would not be the actual buyers and sellers, but competent, arms-length parties brought in to testify in a moot to draw a valuation conclusion. That conclusion is to be based on the evidence put before them by the valuers concerned, combined with their own expertise as qualified market participants. In this context, they should get to see both sides of the transaction, not just their own.

### **4.2.2 VALUE RESEARCH JURIES**

There are circumstances where properties have public amenity value. This method could involve teams of valuers being jointly and severally responsible for a valuation report of un-documented land. Valuer juries would be selected by a team leader to provide the requisite spread of expertise to cover the challenges. Jury members must justify their decisions to other members of the value research jury before presenting their joint valuation. As with peer review, the team could be as small as three, or as large as twelve, the normal



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jury size for common law. If the scope of the assignment is large enough to justify the time / cost of such a valuer jury, and the national or regional pool of qualified valuers is deep enough to fill these juries, then this approach could be utilized reasonably as a basis for a value conclusion by this method. However, it should not be considered as a substitute for traditional valuation methods.

#### 4.2.3 CITIZEN VALUE JURIES.

When it comes to evidence, the strongest is that of directly comparable sales or rentals. However, in the absence of enough credible and reliable evidence of such as for un-documented land, community discussion, perceptions and other inclusive and participatory approaches as guided by the IVS market value definition could be used. However, this needs to be done within the time/cost budget and be utilized alongside more traditional methods. The most fruitful engagement in that context would be with arms-length people with the qualities required to meet the standards of the adapted IVS definition of market/social market value, as applicable to the market concerned. Valuation of un-documented land under certain circumstances may well be able to use moots, value juries and citizen value juries usefully to obtain market price but more work needs to be done to pilot these methods. All of these methodologies have very high time / costs and would only be applicable for large scale valuations.



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## 5. CONCLUSION AND WAY FORWARD

The global agenda reiterates the role of land in poverty alienation and food security, ensuring equal rights and recognition of all legitimate rights with emphasis on whether the rights are documented or not. Responsible land governance brings into focus the importance of collaborative relationships with citizens and groups of citizens and their representation in the development of land policies and systems while at the same time it is a human right that owners of un-documented rights should be treated equally with those having documented land rights. From the forgoing therefore, analyzing and designing frameworks and implementation strategies for valuation of un-documented land is relevant in responding to the global call on land, ensuring its responsible governance and upholding of human rights especially considering that most land in undeveloped countries is un-documented.

It is recognized in the major land/valuation-related international human rights standards that for development and poverty alleviation to take place, some compulsory land acquisition, involuntary resettlement and compensation will be carried out. However, this should not involve unfair compensation among other things, and should employ forced evictions as a last. IVS compliant valuations adapted for the social market are needed and valuers need to be aware of human rights frameworks such as the NUA, VGGTs and regional frameworks such as the African Union Land Policy Initiative. These should also form part of their valuation ethics, research, methods, their identification of value for fair payment and compensation. It should also serve to protect the valuer's reputation by showing due diligence about these issues. Valuations which follow the IVS and international human rights standards are considered important to correcting abuses around land acquisition, fair payment and involuntary resettlement and compensation, particularly where they impact the poor in many different urban and rural settings.

At the same time, the training of valuers, who work in developing countries on un-documented land, needs to go beyond technical issues alone. They need to be competent in also valuing the social market. This involves for example understanding the broader global frameworks such as the SDGs and the human rights framework; and how to undertake ethnically sound gender-responsive valuations. It also involves understanding the socio-cultural and environmental issues that impact value and people's lives.

Valuation of un-documented land serves to strengthen the implementation of the continuum of land rights, a key tool to understanding and strengthening security of tenure for all, including women. Governments, policy makers, the valuation industry, practitioners, capacity development institutions, and other interested parties by valuing un-documented land work towards achieving the SDG goals of conflict prevention, food security, gender equity, and sustainable urban and rural development.



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