

Rics research valuation of unregistered land – the reality of functioning informal land and property markets in Ghana, Peru & Indonesia

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Key Words: Unregistered land, valuation, land registration & titling

ABSTRACT

RICS has recently carried out a wide-ranging research project looking at the realities of functioning informal land & property markets in Ghana, Peru and Indonesia. This is the first time that informal land markets have been studied in this way and this research and its findings should help provide a wealth of background information to anyone working or who has an interest in this sector. This research has focused on how and what valuation methodologies are currently used to value informal land in these geographies, the need for alternative valuation methods encompassing such complex issues as social, environmental, reasonableness, and the conclusion that current global valuation methods may be, in some circumstances, inappropriate. The research both builds on previous work in this important sector (RICS Research 2011 – Valuation of unregistered land – Kenya, RICS Research 2016 – An evaluation of valuation practice in sub Saharan Africa – case study Ghana) and helps provide an evidence base for current initiatives such as the International Land Measurement Standard (ILMS), UN Habitat GLTN ‘Valuation of unregistered land guide’, UN FAO ‘Valuing land tenure rights’ and for future initiatives such as the development of ‘environmental/ecosystem valuation’ standards and International Valuation Standards (IVS).

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1. INTRODUCTION

This research places RICS at the centre of an important global debate on land use, informal markets, acquisition and fair compensation, sustainable land & property taxation and how ‘value’ (and the basic land data it utilises) is widely adopted as a decision-making tool by governments and investors. Recognising and understanding the inherent ‘value’ of legitimate rights over land is also critical for property owners when dealing with acquisition (compulsory purchase) and taxation issues, value in many cases is also the foundation of tenure security and the start of a formalisation process. These are heavyweight and big global issues and are at the core of several Sustainable Development Goals (SDGs) and the New Urban Agenda. The research also underlines the importance and opportunity of professional capacity development (there are very few land professionals – valuers or surveyors - working in these regions) and why an understanding of the informal land market and land based finance is key to managing rapid urbanisation, delivering infrastructure and services, avoiding costly disputes, providing local government funding and producing the affordable housing that is so desperately needed in the majority of the world.

Ghana, Indonesia, and Peru are useful case studies because much of their land is unregistered. In addition, they have embarked on extensive infrastructural development together with expansive registration processes and, relative to other countries, the capacity for land valuation is weak, while in Peru valuers overwhelmingly confine their practice to the traditional formal economy. The authors conducted interviews with valuers and representatives of statutory valuation bodies, carried out a content analysis of valuation reports, and studied judicial decisions in these case studies areas.

Key high-level findings are:

(a) Local valuers have adapted or shown the potential to adapt established valuation methods to value different types of land/tenure- whether registered or unregistered.

(b) The existing methods, however, often substantially undervalue or overvalue unregistered land.

‘Most of the conflict associated with over or undervaluation relates to:

- the top-down nature of the valuation process,
- a narrow view of ‘value’ as limited to only legally created structures,
- an overly strong reliance on asocial valuation techniques for establishing value.’ (p55)

(c) Embracing the concept of ‘reasonable value’ may help to address the problem of undervaluation.

‘Valuers, seeing themselves as experts, refuse to collaborate with partners and expropriated persons. There is a case to be made for turning to a theory of reasonable value, whereby value is generated through a more comprehensive assessment process centred around stakeholder collaboration. Doing so, as demonstrated in the case of Peru, also helps to obtain evidence of sufficient quality to assist in estimating reasonable value. In the case of Ghana, in the few cases where individual valuers have spent more time listening the experiences of locals who use the land, to better understand the complexity of the idea of ‘value’, expropriated people have often felt more satisfied with the valuation results and fewer conflicts over land have occurred.’

2. RESEARCH REPORT FINDINGS

The economic case for title registration has been debated for years, but the argument that title registration is absolutely needed to ascertain fair value of land for compensation is quite recent, generating fresh debates about the ‘valuation of unregistered land’. Part of the broader argument for reducing information asymmetry and hence transaction costs, economists argue that registration is *essential* for valuation of unregistered land. The authors put this issue to a strict road test in Ghana, Indonesia, and Peru by interviewing registered valuers, officers of the land sector agencies responsible for registration, and academics who specialise in valuation and urban planning. On the bases of the data collected, the authors conclude that the assumption that registration is needed for valuation is misleading. Valuers have adapted established valuation methods to value different types of land/tenure- whether registered or unregistered.

The research also underlines why ‘compensation valuation’ is not hindered by the lack of registration. Formalisation and registration can, perhaps counter intuitively, sometimes hinder the ability of poor people to access loans beyond a certain threshold and has a continuing potential to do the very opposite of what its advocates claim it seeks to secure: dispossess land holders by facilitating the speed with which investors and speculators can buy customary land. Registration is contested vigorously in Indonesian courts whose decisions can complement the historical record that registration is fanned by social forces outside Indonesia. These findings extend the existing critical scholarship on title registration by Indonesian scholars and others. Valuation in Indonesia faces major challenges, but such failings are not directly related to a lack of land registration.

Land titles registers are supposed to signal to others information about the quality of land or the openness of the owner of land. As noted by two neoclassical economists, ‘having a formal land title can provide information about unobservable characteristics, such as the landowner’s business acumen, their ability to interact within formal rules, the degree of their integration into formal markets, or the condition of their asset. A bank may prefer to lend to formally titled households, not only because the title mitigates the bank’s risk in the case of a

default but also because the title provides ex-ante information about the likelihood of compliance with the loan contract'. This idea that formal titles give information can be linked to what George Stigler (1982) called 'the economics of information'. In this theory, everything that solves the problem of lack of information is praiseworthy, especially if it enhances market exchange enabling commodities to be exchanged efficiently and effectively. So, land title registration must be useful for valuation and the development of robust land information frameworks and land transfer standards such as the International Land Measurement Standard (ILMS) are essential to effective transfer and disposal.

Previously the key assumption was that unregistered land cannot be valued or, at least, is not currently valued (Nzioki et al., 2013). In turn, those without land title certificates stand to lose in cases of land acquisition for urban development. In the words of the UN-HABITAT (2016, section 2), 'The opaque values of unregistered lands are a major cause of inequities and erode confidence of communities to support these development initiatives. This delays implementation, and frustrates transparently equitable compensation for unregistered properties, and results in unintended harmful long-term consequences to affected parties.' With many of such people living in disaster-prone areas such as river banks (Silas, 1989; UN-HABITAT, 2016), those without title certificates become particularly vulnerable.

The need for the valuation of unregistered land can arise in one or more of the following:

1. Situations of urban expansion into unregistered peri-urban sprawl;
2. Development planning, including the construction of infrastructure projects that may lead to dispossession and hence compensation;
3. Upgrading of informal settlements;
4. Investments in improved farming resettlement initiatives – even disaster related resettlements, redressing historical displacements; and
5. Situations when holders of land want to borrow against it or even when holders wish to lease/sublet their land.

3. PRINCIPAL FINDINGS

- (a) The primary concept of value adopted in practice and theory is neoclassical in orientation.
- (b) This theory of value substantially undervalues unregistered land;
- (c) The idea of value in practice is a motor for systemic dispossession and inequality;
- (d) The assumption that registration is needed for valuation is misleading;
- (e) Ghanaian and Indonesian valuers have adapted established valuation methods to value different types of land/tenure- whether registered or unregistered. Compensation valuation is not hindered by the lack of registration;
- (f) Registration may hinder the ability of poor people to access loans beyond a certain threshold;

- (g) Registration has a continuing potential to do the very opposite of what its advocates claim it seeks to secure: dispossess land holders by facilitating the speed with which investors can buy customary land; and
- (h) Registration is contested vigorously in Ghanaian and Indonesian courts whose decisions complement the historical record that registration is fanned by social forces outside the case study areas; and
- (i) There are major challenges to compensation and compensation valuation in the case study areas;
- (j) But such failings are indirectly related to a lack of registration and can be substantially mitigated by understanding existing valuation methods and developing alternatives.
- (k) Land title registration may not be popularly supported nor clearly needed in the Ghanaian and Indonesian contexts, and contested in the Peruvian context. There needs to be a more direct and robust policy and communications strategy to help professionals and the market understand the advantages of title registration and formalisation.

Despite these findings, the push for registration is likely to intensify. In all contexts, valuers face tremendous challenges about the acceptability of their ‘values’, but this problem is not the result of lack of registration per se. Instead, the theory on which the notion of ‘value’ is built is fundamentally in question.

An alternative valuation and more flexible approach is feasible, but its wide acceptance is contingent on the articulation and acceptance of a new theory of value grounded in institutions and social structures. Here, ‘reasonable value’ is also a consensus or *social* value. Although it should be noted that this term needs to be openly debated within the global valuation/appraisal profession but we can see the call for a more flexible ‘market value’ concept and the understanding that ‘one size’ does not fit all gaining some traction within the recently released UNFAO ‘Valuing land tenure rights’ VGGT technical guide and within the forthcoming UN Habitat GLTN ‘Guide to the valuation of unregistered land’ documents.

Gaining this value, must necessarily be a *social* process rather than be left in the hands of individual or individual valuers. In this sense, valuation must be a social activity, involving unions, assemblies, and social movements, the churches, the courts, the media, and the rest. Valuers need to consult widely for this purpose, but they also need to study the now vast corpus of judgements on what is ‘reasonable value’. Sticking just to the valuation standards of national bodies or even international bodies (IVSC) is necessary but not sufficient. Likewise, interest and attention can more usefully be channeled into developing a reasonable policy of resettlement; not just an individual-based title register and certificates.

A flexible and reasonable theory of value can generate even more variations in value, but why should that be a problem? Value is a social construct, varying from one community to another and from one country to another.

The full research paper will be made available to after the conference and uploaded to the World Bank 2018 conference website.

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James Kavanagh MRICS C.Geog is a Chartered Surveyor & Chartered Geographer. James is currently Director of Global Land & Resources with The Royal Institution of Chartered Surveyors (RICS). He has a strong interest in planning, land acquisition, land valuation and property economics. James is chair of the International Land Standard (ILMS) Coalition and is working on further research and output on issues of valuation within informal settlements, customary land issues and the process of land and property rights formalisation.

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