

FIG

# FIG WORKING WEEK 2017

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May 29 - June 2 Helsinki Finland



*Presented at the FIG Working Week 2017,  
May 29 - June 2, 2017 in Helsinki, Finland*

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## TS021: Valuation of Unregistered Lands Guidebook: Synopsis of the Current Draft

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## The Story So Far

This presentation is intended as the last of a series of presentations on an initiative undertaken by the Global Land Tools Network of UN-HABITAT, FIG and other partners\* to identify tools and guidance on the valuation of unregistered land.

\* These partners include the Royal Institute of Chartered Surveyors (RICS), UN-Habitat, Institute for Housing and Urban Development Studies (IHS), Lincoln Institute of Land Policy and the Land Governance Laboratory of Boston.



The series began in 2013, when UN-HABITAT/GLTN, in partnership with the Royal Institution of Chartered Surveyors (RICS), commissioned a scoping study on Valuation of Unregistered Lands. The study recommended that a wide range of tenure types that form ‘the continuum of rights’, for example as in UN-HABITAT’s Social Tenure Domain Model (STDM) need to be accommodated in the valuation process.

Later, the development process called for the preparation of a manual to help valuers enter this new frontier of their profession.



At the Expert Group Meeting (EGM) reviewing the draft (In Sounios, Greece, from the 15th to the 16th of August 2016), it was decided that the terms of reference should be extended to the provision of a guide, not simply a manual.

The difference between the two is that a guide includes an introduction to valuation, which was to be pitched at the level of policymakers. That was to help them better understand the many potential roles, of valuation in policy formulation and implementation. Thereby, they would be better equipped to assess the strengths, weaknesses, opportunities and threats of valuations of the particular unregistered lands under consideration.



That EGM provided a Table of Contents for that Guide. The Guide produced thereafter enfolded all the information in the manual as provided to the EGM for their consideration, plus all the additions recommended by the EGM.

The expanded and reformatted version was presented at a Masterclass held at the Annual World Bank Conference on Land and Poverty, held in Washington, D.C., 20-24 March 2017.

Comments received at and following that masterclass were then evaluated, conceded adjustments made, and those requiring further consultation retained for your discussion in the current version.



## Chapter One: Introduction

One such contested matter was the philosophical emphasis of the guide which, although already present in the manual, was accentuated in response to the recommendations made in Sounios.

As mentioned, the guide was to be pitched at the level of policymakers. I am familiar with that level as a land policy facilitator. It is on record that hundreds of millions of dollars are wasted due to insufficient attention to the applicability philosophical assumptions in varied contexts (for a recent example, see Katz 2017).



I for one am reluctant to see millions more wasted, and countless lives impaired by insufficient attention to the understanding of the philosophical and other assumptions in general, and their applicability in the various contexts of the valuation of unregistered land in particular.



We think in service of our framings, and all our frames are influenced by rationality (especially ecological rationality), heuristics such as stereotypes, irrationalities (especially in this field the positivist fallacy), values and principles, temperament, mood, hangovers etc. – a complex of factors.

The emergent discipline of Relational Frame Theory (Barnes-Holmes et al 2016) is at last addressing this area with some rigour, adopting a “multidimensional multilevel (MDML)” framework (albeit only partially).

Barnes-Holmes, D., et al. 2015. “Relational Frame Theory”. *The Wiley Handbook of Contextual Behavioral Science*. D. Zettle, S. C. Hayes, D. Barnes-Holmes and A. Biglan. Chichester, UK, John Wiley & Sons, Ltd.



All such frames count for life in general, and are mixed and matched in our relationships with each other and other living and non-living existents. Social imaginaries (Taylor) emerge from these relationships, and artefacts are created from those social imaginaries. These include nation states, property rights, and everything you see in this room except what is living. That also include market values, which are formed by living people with a framing-in-common that some existent can be bought and sold.



As “market value” is itself a philosophical statement – a theory or attitude that acts as a guiding principle for behaviour (Oxford Dictionary) – it would be deficient in a guide (as distinct from the original manual) to provide a philosophical framing for the phrase, defined as follows:

***Market value is the estimated amount for which an asset or liability would exchange on the valuation date between a willing buyer and a willing seller in an arm’s length transaction after proper marketing wherein the parties each acted knowledgeably, prudently, and without compulsion (IVSC 2016).***



A person claiming professional status as a valuer may therefore be required to apply a value in a case where not only is there no market evidence, there is no market at all.

As in all valuations, the valuer must also assume parties meeting the market value definition. Furthermore, the valuer must both provide evidence and perform due diligence in both gathering and interpreting that evidence, and provide the result in the form of a speaking valuation (one that properly informs the reader concerning how the valuer arrived at the valuation figure).



Consequently, a valuer is obliged to socially imagine the market for a property right, even if no such social imaginary as a property right exists for the property in question, and then socially imagine what that property would exchange for in such a market between parties that are of the qualities described in the market value definition.

I claim that once that framing is understood, everything else in the guide falls into place, including that the best evidence is comparable sales, themselves all products of social imaginations, and where such evidence is insufficient, it would be legitimate to employ socially imagined decisions to inform the valuation, as described in section 5.4.



The guide then describes the global need for the valuation of unregistered lands, as diagnosed by the GLTN and others. The final section of the chapter then clarifies the varied natures of unregistered lands, and the context in which the guide appears.



“Such market value exchanges are likely to have occurred on unregistered lands for thousands of years, as were other exchanges that would not have met the requirements to satisfy that definition of market value ...

“The task of differentiating between market value and not market value transactions can be simple, complicated, complex, or wickedly difficult. All four kinds of tasks can be encountered by a valuer in any markets. However, the simple to complicated ones are more likely to be found in well-functioning formal markets, because they are by definition transparent and accountable markets in clearly defined, enforceable and transferable property rights.



The second chapter describes the uses for valuations, what is required of valuers, and the problems that face. Section 2.3 describes national or provincial scale barriers, such as may appear in legal frameworks, market information, lack of those able to professionally service the markets, external pressures, and inappropriate government policies and actors



Section 2.4 describes the typical barriers valuers can expect when valuing unregistered lands; finding out who owns what and what disputes there may be about that, hostile receptions to enquiries, where the socially imagined boundaries are, if any, and what sales evidence there has been, if any.

The following section (2.5) proposes some remedies for these problems. Section 2.6 provides some conclusions, and sections 2.7 closes the circle by describing the target users of the valuer's services.



As mentioned in the teaser for this session, land acquisitions and compensation is of critical importance in the delivery of much-needed infrastructure in the areas of GLTN's focus. Furthermore, it is the “pointy end” of the development of the valuation profession in general, providing a significant proportion of the law that valuers must operate within.



We therefore consider it important to provide guidance within the guide concerning the various heads of compensation that, subject to local legislation, are to be considered for compensation – the market value, severance, disturbance, injurious affection and disturbance – and guide the reader to more sources which, while focussing on the valuation of registered land, still provide principles and practices relevant in the context of unregistered land.



## Chapter Four: Market Value, Informal Rights and Analysing sales

This chapter begins by defining and expert, and advising that no-one should hold themselves out as an expert in the subject matter concerned without achieving such competencies in the market concerned. As with all valuation qualifications, that usually involves both academic training and practical experience.



The chapter concludes by providing a series of examples of the questions a valuer should ask when examining the circumstances of sale to determine how applicable that sale may be as evidence. Only once the valuer is satisfied that the circumstances allow the direct or qualified application of that evidence should it be applied, and such questions assist in gaining that satisfaction and judgement.



Chapter Five: This chapter includes the heart of the former manual, before it was converted into a guide at the Sounios EGM.

It provides the global standard valuation procedures and the ethical standards which are at least as applicable in the case of unregistered land in the informal sector as in valuations of land in the formal sector.



It has four main sections: Ethical Standards, Global Standard Valuation Procedures, Fit-for –Purpose suggestions to address particular difficulties with the valuation of unregistered lands, and potential alternative sources of evidence if sales evidence provides little or no guidance. These are all based on the recognition of the social imaginary nature of market value itself.



This chapter provides a few lines on some of the many different types of properties that may be encountered when valuing unregistered lands. As a stand-alone, these comments are inevitably deficient, but when read from the foundations laid in the previous chapters they are of more substantive value. 6.12 and 6.13 – on the values of trees and natural capital respectively – are more expansive than the others.

This is one of the chapters where any advice you can provide will be especially welcome.



- The final chapter refers the need for capacity-building, and how it can be facilitated at four major scales, preferably mutually assisting one another
- the global scale (for example, through events such as this, through the internet via chat groups etc),
  - the international scale, for example through international valuation institutes, the International Valuation Standards Council and other infrastructure
  - The national and provincial scales, and
  - At the coal face of the practitioners themselves.



All of the above may sound daunting at first, but can be readily implemented via the correcting report formatting and due diligence procedures, and once information builds over time the valuers hard work in gaining the experience and evidence can be employed over and over again. My co-author Matt Myers has provided an example in this annexure.

*The Guide then concludes with a glossary and list of References.*

*THANK YOU FOR YOUR ATTENTION*