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# Valuing unregistered land





An aerial photograph of a densely packed urban neighborhood, likely in a developing country. The buildings are multi-story and closely packed together, with many having corrugated metal roofs. A single palm tree stands out in the center of the image. The overall scene is a complex, layered urban landscape.

## Valuing unregistered land

# Report for Royal Institution of Chartered Surveyors

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# Contents

<b>Executive summary</b> .....	6
<b>1.0 Background and questions motivating the study</b> .....	7
<b>2.0 Literature review</b> .....	8
2.1 Introduction .....	8
2.1.1 Research on valuation methods: how best to value in mature markets.....	8
2.1.2 Research on valuation methods: inadequacies for addressing different markets.....	8
2.1.3 Research on valuation methods: suggestions on how to value in different markets.....	8
2.2 Gaps in the literature .....	9
<b>3.0 Research approach</b> .....	10
3.1 Primary data .....	11
3.2 Secondary data .....	12
3.3 Data analysis.....	12
<b>4.0 Case studies</b> .....	13
4.1 Ghana.....	13
4.1.1 The land tenure system and unregistered land.....	13
4.1.2 Valuation practice.....	15
4.2 Indonesia .....	18
4.2.1 The land tenure system and unregistered land.....	18
4.2.2 Valuation practice.....	19
4.3 Peru.....	23
4.3.1 The land tenure system and unregistered land.....	25
4.3.2 Valuation practice.....	26
<b>5.0 The challenge of valuing unregistered land: nature, solutions, and prospects</b> .....	31
5.1 Conclusions.....	32
5.2 Recommendations .....	32
<b>6.0 Bibliography</b> .....	33
<b>7.0 Acknowledgements</b> .....	36

## List of tables

Table 3.1	Interview schedule for Ghana, Indonesia and Peru .....	11
Table 4.1	How frequently the leading valuation firms in Ghana use the Cost Method .....	15



## List of figures

Figure 3.1	Characteristics of unregistered land and security of tenure ....10
Figure 4.1	Settlements marked to show they are illegal .....14
Figure 4.2	Settlements on unregistered land in Accra .....15
Figure 4.3	COFOPRI registered house at Amplicacion Bahia Blanco, in the Lima District .....24
Figure 4.4	A family building their new home in COFOPRI-registered land .. 24
Figure 4.5	Informal housing beside the formalised housing above. Note the provision of electricity .....25
Figure 4.6	A water tank of Sedapal, the public water supplier .....27
Figure 4.7	As funds improve, buildings grow upwards on the small lots ..29

## List of abbreviations

<b>ADB</b>	Asian Development Bank
<b>AfDB</b>	African Development Bank
<b>BAL</b>	Basic Agricultural Law of 1960 (BAL)
<b>BOQs</b>	Bill of Quantities
<b>BPN</b>	Badan Pertanahan Nasional
<b>COFOPRI</b>	El Organismo de Formalización de la Propiedad Informal
<b>CTTP</b>	Cuerpo Tecnico de Tasaciones
<b>DRC</b>	Depreciated Replacement Cost
<b>FAO</b>	Food and Agriculture Organization
<b>GhIS</b>	Ghana Institution of Surveyors
<b>GRC</b>	Gross Replacement Value
<b>IMF</b>	International Monetary Fund
<b>KPSPI</b>	Kode Etik Penilai Indonesia
<b>LV</b>	Land Value
<b>LVD</b>	Lands Valuation Division
<b>MAAPI</b>	Masyarakat Profesi Penilai Indonesia/Indonesia Society of Appraisers
<b>NRC</b>	Net Replacement Value
<b>PRODA</b>	Proyek Agraria Daerah
<b>PRONA</b>	Proyek Operasi Nasional Agraria
<b>PV</b>	Property Value
<b>RICS</b>	Royal Institution of Chartered Surveyors
<b>UN-HABITAT</b>	United Nations Human Settlements Programme
<b>USAID</b>	United States Agency for International Development
<b>VGGT</b>	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests



# Executive summary



Image source: 1 – BOULENGER Xavier / Shutterstock.com 2 – Utik Margarini / Shutterstock.com

## Purpose and scope of the study

This study investigates the widely-discussed claim that title registration is prerequisite for valuing unregistered land.

## Methods

In addressing the research problem, empirical research was carried out in Ghana, Indonesia, and Peru – all countries where the issue of unregistered land is recurrently debated. Registered valuers, officers of the land sector agencies responsible for registration and valuation, and academics who specialise in valuation were interviewed alongside architects, anthropologists and urban planners who work with occupants of unregistered land.

## Results

- Valuers have adapted or shown the potential to adapt established valuation methods to value different types of land/tenure, whether registered or unregistered.
- The key problems that afflict these innovations are over valuation, undervaluation and the lack of meaningful consultation in the valuation process in ways that make valuation top-down. These problems are compounded when value is construed narrowly as an asocial construct.
- Local institutions, such as the courts, uphold the innovations of valuers, if they are reasonable and reject the valuation of registered land, if deemed unreasonable.
- Local processes exist to resolve conflicts about valuation, but the problems recur because of structural processes of asocial valuation complicated by capacity challenges.

## Conclusions

- Land title registration is NOT necessary to address the valuation challenges in the case study areas.
- Challenges to valuation could be better addressed by determining the highest and best current use of

the property or the opportunity cost of current use in a process that entails systematic investigation. This included interviewing a range of willing and able market participants and other stakeholders to arrive at values that are more reasonable to stakeholders and the courts.

- Valuation – whether for registered or unregistered land – can be more useful as a social practice.

## Recommendations

### Professional bodies:

- Develop professional standards about and strive to enforce *participatory valuation* in relation to valuation of unregistered land.
- Assist in the process of capacity development in social valuation methods.
- Investigate the appropriate use of the current IVSC definition of ‘market value’ and how it might be customised in informal situations to better reflect a local understanding of ‘reasonableness’ along with social and non-physical factors

### International Development Agencies:

- Indigenous effort can be helped by pouring less resources into registration programs and more resources into investigating value as a social construct and in funding research on alternative notions of value.
- Consistently insist on ‘socially sensitive value’ or socially constructed notions of value arising from *participatory valuation* when funding development projects.

### Governments:

- Build valuation capacity and develop a framework to better integrate *participatory valuation* within the process of compulsory acquisition/evictions.
- Recognise and support informality to improve both the housing and social conditions of residents of informal settlements.

# 1.0 Background and questions motivating the study

The need to value unregistered land is more pressing today than ever (McDermott et al., 2015). Whether in situations of urban expansion into unregistered peri-urban sprawl, in development planning including the construction of infrastructure projects that may lead to dispossession and hence compensation, or whether informal settlements are being upgraded, valuation of unregistered land is important (McDermott et al., 2015, pp. 6-7). Sometimes framed as the desire to find fair value or compensation for those without registered land, or to assist vulnerable groups with mere customary rights to have market value for their land (see a detailed account in Nzioki et al., 2013), the interest in the valuation of unregistered land is gaining much momentum.

How can such valuation be done? The prevailing view is that unregistered land cannot be valued, is not currently valued (Nzioki et al., 2013), or is badly valued. 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.’*

The posited solution for these problems has been a global push for the institution and implementation of land title registration. However, some studies (see, for example, Boettke et al., 2012; Kauko, 2012; Sheehan, 2011; 2012; Boydell 2010; Boydell and Baya, 2011; and Anderson, 2006b; 2015) question what they regard as a blind faith in land registration as a solution to the above challenges and, instead, suggest that alternative solutions might exist from valuers’ own practice in different contexts.

Given that title registration is regarded as pre-requisite for valuation. How do valuers approach the valuation of unregistered land in practice? Is this good practice? This study was commissioned by the RICS to investigate the valuation of unregistered land and property and to address these issues. The study is significant partly for this reason but it is particularly important because governments, the valuation industry and professional bodies need to ensure they are informed about, and equipped to respond to, future scenarios for the expansion of these informal land markets.

## 1.1 Research aim and objectives

The objectives of this report, therefore, are:

- To identify the key informal market valuation issues around the world and the context within which such issues arise.
- To examine existing trends and strategies for the valuation of unregistered land in selected case studies by examining (1) valuation methods (2) challenges in the valuation process and (3) alternative notions of value in three case study countries.
- To develop policy recommendations for outlining actions needed by governments (at various levels), the valuation industry and professional bodies to ensure the land and property sector is better able to operate effectively in this environment.

## 1.2 Structure of the report

The rest of the report is divided into 5 chapters. The next chapter provides the context of the study. It does so by reviewing the key themes in the research on valuation methods, highlighting what is known and what remains to be studied. The key argument for this chapter is that, in spite of a growing body of research on valuation methods and the growing need for valuation of unregistered land, empirical research on the topic is thin and hence policy and professional lessons are difficult to develop. Chapter 3 focuses on how to address the gaps in current knowledge identified in the literature review. This chapter describes how the research questions are answered, but it also explains why the approach adopted is the most appropriate. Ghana, Indonesia, and Peru are the case studies at the heart of this approach.

What do these case studies tell us? In what ways do they move our understanding of valuation? What policy changes are needed to help rather than hinder the process? Chapter 4 contains the key findings of the study and how they relate to what is already known, while Chapter 5 distils lessons from the study for governments, for international agencies and for valuation practice.

## 2.0 Literature review

### 2.1 Introduction

Economists of all schools have a 'theory of value'; a theory as to how one activity, process, good, or commodity is weighed relative to another. Price is not value because it does not say why 'A' has X price and not Y price. But price can reflect value and can sometimes express it (Kerr, 2001; Stilwell, 2012). Existing research on land valuation can be systematised into three strands. These are:

1. Studies which seek to identify the best way to value land in mature markets.
2. Studies on valuation methods that seek to show why the primary body of work under (1) is in need of change.
3. Studies on actually existing valuation methods.

The first body of work is the most common and is derived from studies based in efficient real estate markets where there is information and registration is assumed as given. While the second body of work suggests alternative valuation methods, research in the third strand – on actually existing valuation methods, whether they are adaptations of core valuation methods or entirely new practices – is rare.

#### 2.1.1 Research on valuation methods: how best to value in mature markets

Research on valuation methods has long focused on mature markets, defined as the contexts within which valuation practice has long been developed (Nzioki et al., 2013). Within this context there is often some 'internal' criticism (see, for example, Cannone and MacDonald, 2003; Schulz, 2003; Hordijk et al., 2011; Schnaidt and Sebastian 2012) in one of at least three areas. First, there are those studies that seek to judge the comparability of valuation methods in Western societies. Second, there are those studies that defend the standards in certain countries and third, there are those that seek to improve the methods of valuation more generally by putting the case for more theoretically sound valuation.

The bulk of the research, however, defends valuation methods which are grounded in the 'efficient real estate markets' hypothesis. Some (e.g., Wyman et al., 2011) contend that these methods are not applicable to other markets and there have been calls for a 'new paradigm'. However, not much has been done about this new paradigm. For example, although the call for a new paradigm was published in an article in *Journal of Property Investment and Finance*, neither the papers in that issue (most of which offered what one paper called 'European valuation practices', Hordijk et al., 2011), nor the subsequent issues of that journal, have not heeded the call. For example, an issue dominated by papers on valuation in 2012 vol. 30.2, focused on 'rational valuation

approaches' (see, for example, Chan and Harker, 2012; Fuerst and Anna-Maija, 2012). The emphasis again was on the advanced markets of Germany and the UK. A third issue (33.3, 2015) of the journal was similar – it focused on developing existing methods of valuation in the advanced real estate markets of Europe and the Americas and the focus was on capitalisation rates (McDonald, 2015; Patrick, 2015), property price indices (Roubi, 2015; Camilleri, 2015) and depreciation rates (Grover and Grover, 2015; Gilbert, 2015).

#### 2.1.2 Research on valuation methods: inadequacies for addressing different markets

The prevailing 'efficient market hypothesis' that underpins most of the research on valuation methods has been the focus of much criticism. Simons and his team (2008) published a book, *Indigenous Peoples and Real Estate Valuation* which contains many interesting contributions, mostly centred on the incompatibility of Western and non-Western conceptions of value. Those on valuation centre on compensation and land restitutions. The registration of land is not a focus much less the valuation of unregistered land. John Sheehan (2011; 2012), Spike Boydeell (2010; Boydeell and Baya, 2011) and Tim Anderson (2006b; 2015) have all worked on frameworks for valuing unregistered land. However, this work has taken the form of proposals of how to value unregistered land on the basis that the 'efficient market hypothesis' approach is problematic. There are a few exceptions, notably a study on Kenya conducted by Nzioki et al. (2013) and a largely Central and Eastern European study conducted by Maliene et al. (2016). The ways that valuers value such land, as stated in their valuation reports and by themselves, and the reasons why they conduct valuations in the way they do, requires more careful analysis beyond the Kenyan context.

#### 2.1.3 Research on valuation methods: suggestions on how to value in different markets

Two paths are common in the literature. On the one hand, there are those who contend that the more advanced valuation tools in Western societies could be adopted in other non-western societies. Doing so would, however, require that the pre-requisites of the western systems are met. In this regard, Studies by Anim-Odame et al. (2009) and Owusu-Ansah (2012a, 2012b, 2013) have shown that the information generated in the process of land registration can be put to the development of a real estate price index. Such an index can be used in conducting various types of analyses about land and real estate in the formal market. Some statistical analysis suggests that registered land gives the impression of greater levels



of legal security and protection (e.g., Owusu-Ansah, 2012a, 2012b). Relying on the hedonic pricing approach is crucial for this purpose (see Schulz, 2003 for a detailed discussion), as this technique is able to disaggregate the quantum idea of 'value' into its component parts. However, these proposals for the 'westernisation' of valuation methods can be highly contentious as, for example, utilising such methods in non-western countries can incur substantial transaction costs and may be affected by conceptual bias (Elhahi and Stilwell, 2013).

The other idea common in the literature is to use valuation methods that focus on contextual issues; seeking to understand how these issues apply to a situation (Kauko, 2012; Bromley, 2016). The institutional economics approach, especially as applied to property, was developed by R.T. Ely as the 'look and see' approach (1938 / 2011). This approach places an emphasis on inductive reasoning, that is, actually looking and seeing rather than depending on the deductive thinking and *a priori* reasoning that pervades mainstream economics. Ideas on how to proceed in this way exist, but they have not been widely-researched or utilised by the international community. In some cases, judicial decisions have supported and legitimised valuations based on this approach, giving the power required for implementation. Such an approach has also proven to be an appropriate paradigm because it has a long-established record of untangling complex property rights (Bromley, 2016). A recent paper (Kauko, 2012) in the Journal of Property Research strongly advocated the institutional approach to an analysis of value because of the paradigm's:

*'theoretical integrity; namely, [...] a socio-culturalist view of property [...], local housing market behaviour, urban regeneration activities, and dwelling and neighbourhood improvement'* (p. 155).

The study notes that:

*'...institutional economics [...] is well-placed to provide a conceptual framework for the analysis of issues surrounding property price developments. This is particularly true in arenas where qualitative factors cause a change that is discontinuous from the previous structure...'*(p. 153).

So, it is an appropriate approach for contexts where a quantitative theory of value cannot be consistently applied.

## 2.2 Gaps in the Literature

From the review of the literature, the crosscutting issue of the valuation of unregistered land is in need of study. Specifically, how is unregistered land valued? What have been the benefits and risks? And, in what ways can valuation practice be improved? Although crucially important, the earlier attempts to address these questions by Nzioki et al. (2013) and Maliene et al. (2015) have not as yet been engaged substantially.

Filling in these gaps in knowledge is important, not only as a means to improve valuation practice in the context of unregistered land, but also because of current political and economic issues. The valuation of unregistered land has implications for helping or hindering questions of compensation, of eviction and of displacement. Valuation has a place in contributing to the protection of vulnerable populations living on unregistered land (Nzioki et al., 2013). The present study seeks to bridge this debate by establishing how the valuers value unregistered land and the successes and challenges that they encounter. On the basis of these findings, this report also makes recommendations for policy and practice.

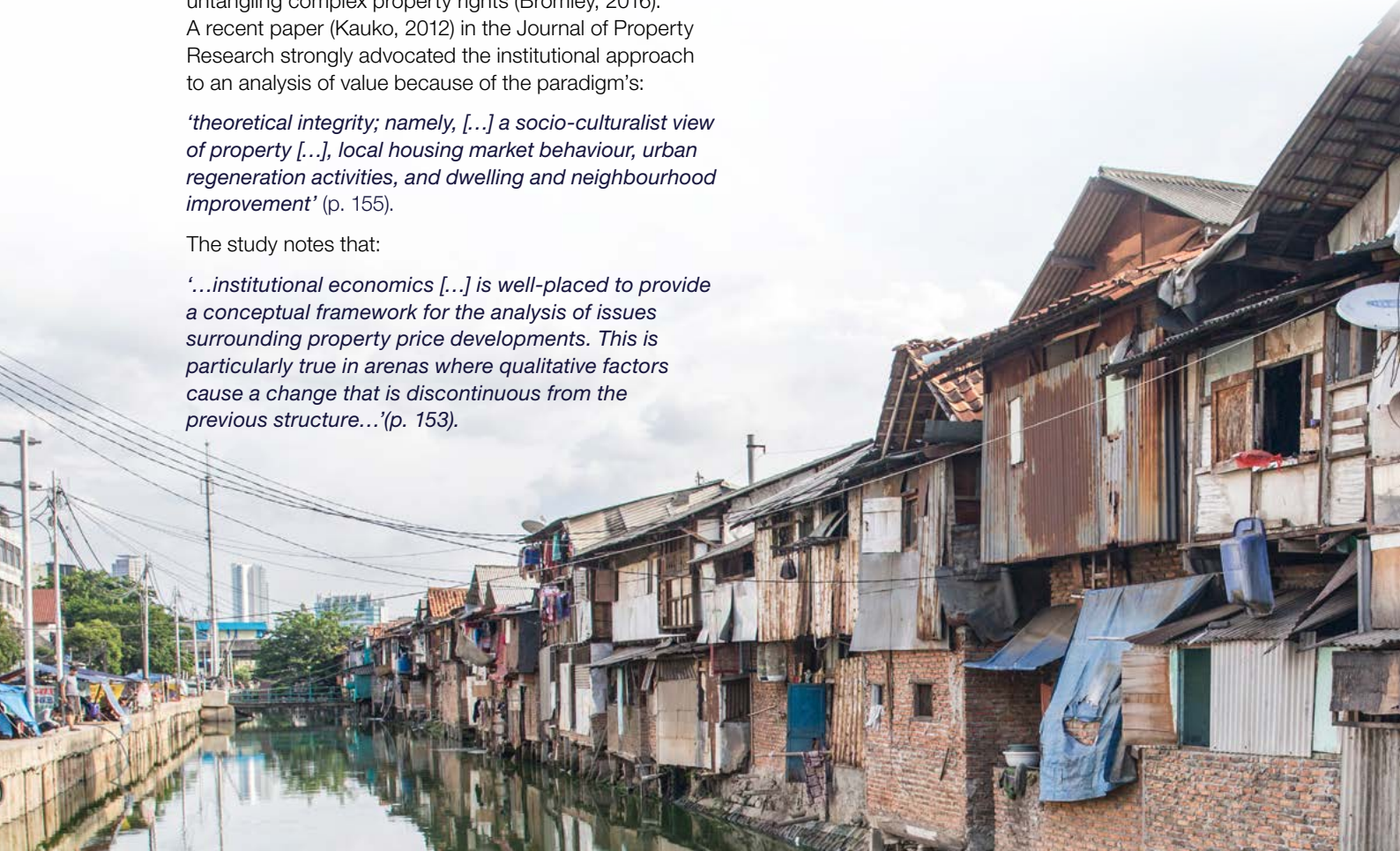


Image source: Bart Vos / Shutterstock.com

## 3.0 Research approach

For this study, the concepts of ‘unregistered land’ and ‘security of tenure’ are complex social forms whose multidimensionality intersect.

As shown in Figure 3.1 unregistered land can be illegally occupied, but the land itself may be formally registered in the name of others. Unregistered land can also be unregistered customary land or land in slums that is not registered (see Obeng-Odoom, 2013). This intersectional view of unregistered land overlaps with the multidimensional conception of ‘security of tenure’ (Obeng-Odoom and Stilwell, 2013), which is centred on the economic, social and legal security of tenure. Economic security entails distributing land and property rights equitably. The social security of tenure, on the other hand, is about quality housing and livelihoods as well as collective land use and social protection. The legal security of tenure places emphasis on legal protection against evictions and the offer of protection for quiet enjoyment of space.

The methods used in this research were devised to question how unregistered land is valued, what approaches are used, the assumptions these are based upon and the resulting implications for those vulnerable groups inhabiting – and other stakeholders operating in – this environment.

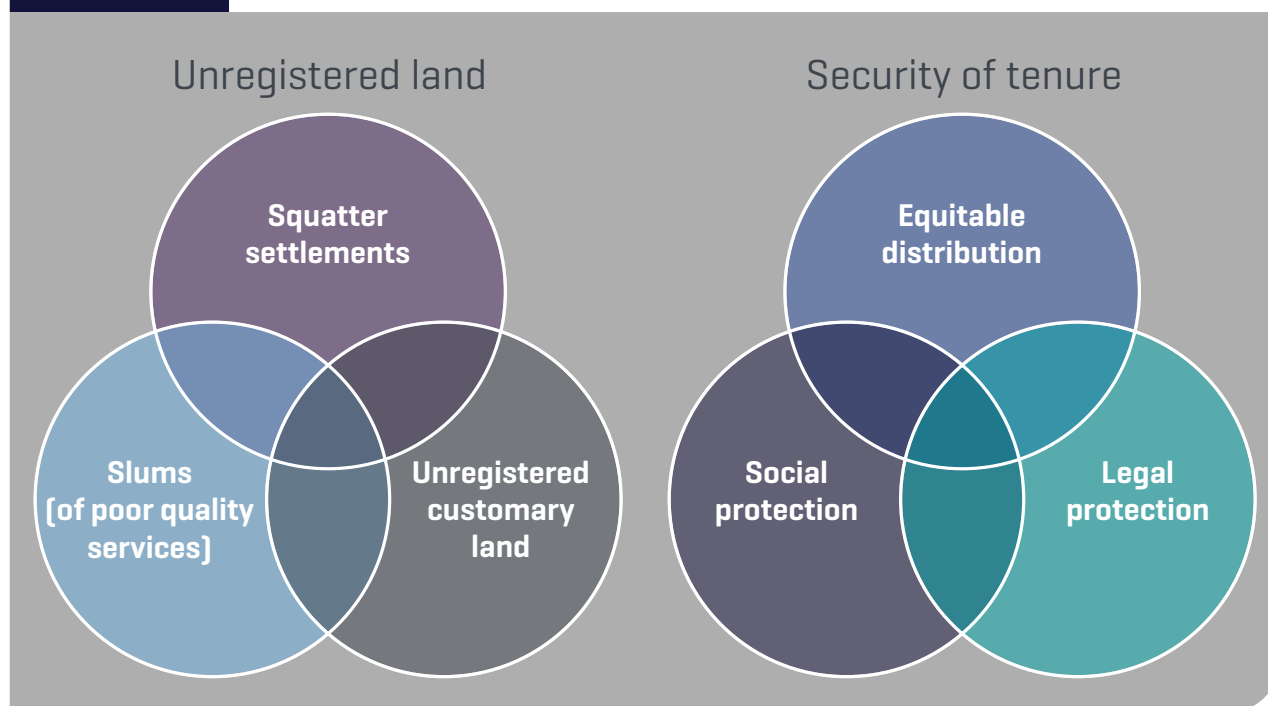
Ghana, Indonesia, and Peru are the case studies for this research. They are appropriate case studies because of their experiences with informality.

- **Ghana:** Since the 1970s, when the concept of informality was developed in Ghana by Keith Hart (1973), Ghana has become a place of choice for studying informality. Research on Ghana’s informal economies helps to raise issues of policy and analytical interest (Obeng-Odoom, 2011; Bob-Milliar and Obeng-Odoom, 2014) as well as bring into sharp focus valuation practices adopted when dealing with the loss of land by residents of informal settlements (Hauserman, 2018).
- **Peru:** Peru is the quintessential home for investigating whether formalising is a panacea for informality. Well-known for being the laboratory for Hernando de Soto’s claims about how registration of land is the magic bullet for the dilemma of informality (de Soto, 1989, 2000; Gilbert, 2012), Peru is an appropriate focus for a study on the valuation of unregistered land.
- **Indonesia:** Like the two other case studies, informality is a major issue in Indonesia but, unlike Peru, it is not the rejection of informalisation but rather its embrace – at least in some cities such as Surabaya – that is seen as a solution, thanks to the leadership of Johan Silas, the country’s foremost planner (Peters, 2013; Colombijn, 2016).

These three case studies, therefore, complement one another and provide a relevant context for studying the valuation of unregistered land.

**Figure 3.1**

**Characteristics of unregistered land and security of tenure**



**Table 3.1** Interview schedule for Ghana, Indonesia and Peru

Geographical location	Information about interviewees	Number of interviewees
<b>Ghana</b>	Officials of GhIS	2
	Teachers/practitioners of valuation	2
	Practising valuers	5
	Curators of technical studies	2
	Local informants on unregistered land/property	1
	Official African Development Bank	1
	<b>Total</b>	<b>13</b>
<b>Indonesia</b>	Officials of MAAPI	2
	Badan Pertanahan Nasional valuers/state valuers	2
	Officials of ministry of finance	4
	Teachers/practitioners of valuation*	3
	Urban planner/architect/anthropologists*	3
	Curators of technical studies	2
	Local Informants on unregistered land/property	2
<b>Total</b>	<b>18</b>	
<b>Peru</b>	Cuerpo Tecnico de Tasaciones (CTTP)	4
	Independent consultants and scholars	2
	COFOPRI Officials**	5
	<b>Total</b>	<b>11</b>
<b>Total</b>		<b>42</b>

\* One person straddled between Indonesia and Australia

\*\* Including a UN-HABITAT representative brought to the table at a meeting organised by COFOPRI

### 3.1 Primary data

Data was collected from August to November 2016 in all three case study areas. Table 3.1 contains a breakdown of the people interviewed for the study. Overall, forty-two semi-structured interviews were conducted with valuers, leaders of the valuation bodies and state valuers.

Interview participants were identified from lists maintained by national valuation boards such as the Ghana Institution of Surveyors (GhIS). A 'chain referral sampling' approach, in which diverse interviewees recommended other possible interviewees in different networks (Jones et al., 2012), was also utilised. The interviews were semi-structured.

A core set of questions (asked in different ways depending on the people interviewed) was sent to the interviewees before the actual meeting. The actual interview was, therefore, guided but not rigidly structured. Each interview lasted at least one hour.

In Peru, the authors were able to join organised site visits in addition to the interviews held with stakeholders. The first visit was to Amplicacion Bahia Blanco site, which had an area of still-unregistered housing adjoining a formalised area. The second site visit was to an area of land that had been formalised much earlier on, Los Olivos. Although still distant, Los Olivos is located closer to the centre of Lima than Amplicacion Bahia Blanco.





## 3.2 Secondary data

Secondary data were collected from a variety of sources, including:

- **Valuation reports:** a content analysis of various valuation reports was conducted to identify the approaches used for the valuation of unregistered land in the Ghana case study. One set of reports was prepared by valuation firms, while the other set of reports was prepared by trainee valuers in 2015 but were assessed as satisfactory. Depending on archival reports and database is an established method of data collection in valuation studies (see, for example, Awuah et al, 2016). As detailed calculations are typically left out of valuation reports, the valuers who prepared the reports were sometimes contacted for further clarification.
- **Judicial decisions on valuation:** consistent with the methodological axis of this study and previous research on 'value' (see, for example, Abdulai and Owusu-Ansah, 2014), judicial decisions and rulings were examined to see what guidance they give in the valuation of unregistered land. Such a source is powerful because it contains the force of law.
- **Professional regulations:** valuation committees in the national valuation boards were also consulted because they compile bylaws, codes, and professional regulations about how to value such land.
- **Higher education:** the leading universities (Kwame Nkrumah University of Science and Technology in Kumasi, Ghana; Institut Teknologi Sepuluh Nopember in Surabaya, Indonesia; Petra Christian University and Veteran University in Indonesia) and especially their valuation departments (Department of Land Economy, Department of Finance, and Department of Civil Engineering respectively) were consulted on what might be the best approach to such valuation.

In Peru, the authors conducted an expansive desk review of scholarship on the two areas visited in addition to the stakeholder interviews. As a result, the research team were able to identify and usefully interview two additional senior Peruvian consultants who are scholars in the areas of land policy and registration, as well as officials from the Peruvian equivalent to an institute of valuers, Cuerpo Tecnico de Tasaciones (CTTP).

## 3.3 Data analysis

To analyse these data, the Attride-Stirling (2001) thematic technique was used. Data was analysed through data reduction, presentation and interpretation. That is, data was sieved through to arrive at the most relevant points (reduction); data was portrayed in ways that help to address the research questions (presentation); the patterns and meanings of the data were studied in relation to the research questions (Miles & Huberman, 1994; Patton, 2002) throughout the study (interpretation). To ensure validity in data analysis, the researchers have been self-reflexive by making explicit our own position in relation to the data collection process.





Image source: Danilo Marocchi / Shutterstock.com

## 4.0 Case studies

For each of the case study countries, this chapter addresses the following questions:

- What is the nature of the system of land use and ownership?
- How is valuation practised and how do valuers estimate value for unregistered land?

This chapter draws on interview results, court decisions, and valuation reports in Ghana, Indonesia, and Peru. The chapter shows that the effort of local valuers to adapt well-known valuation methods such as the cost and market comparison approaches is reinforced by judicial decisions to co-ordinate these processes. Within the context of a complex land tenure system, it appears that these organic steps have been quite successful. However, the idea of socially constructed value, or an alternative notion of value, could be better embraced by valuers. The chapter is divided into three sections, which respectively examine the land tenure system, the valuation process and some of the loops through which professional valuers must jump in Ghana, Indonesia, and Peru.

### 4.1 Ghana

#### 4.1.1 The land tenure system and unregistered land

The customary land tenure system is the most dominant in Ghana, constituting 78 percent of all land in the country (Kasanga, 2003). The remaining 22 percent is owned by the state, either alone (20 percent) or jointly with communities (2 percent) (Kasanga, 2003). Almost all interests in land derive from the allodial or paramount interest, which is vested in traditional land-owning institutions (such as chiefs or priests), families, clans or, in a limited number of cases, individuals (Woodman, 1996; Ministry of Lands and Forestry, 1999). Most lesser interests (e.g. customary usufruct and fixed-term leaseholds), derived from the allodial interest, differ from one another because of different customs and practices in different places. It follows that the incomparability of interests is a structural feature of customary land tenure in Ghana.

Another key feature of customary land ownership in Ghana is that it is usually unregistered (Abdulai, 2006; 2010; Obeng-Odoom, 2016). While under the current Land Title Registration Law some parcels of land in areas declared as registration districts should be registered, in practice, only a few transfers of land between different parties (transactions) are registered. In Accra, the capital city, between 1981 and 2001, only 11,382 transactions were registered, although there were over 55,000 land transactions around this time (Abusah, 2004, p.44). There are also many illegally built structures and settlements in the city (Grant, 2009; see Figures 4.1 and 4.2).

Figure 4.1

## Settlements marked to show they are illegal



Image source: Authors' Fieldwork, 2016

One might expect that this lack of registered land transactions would generate difficult valuation problems, for example in the form of major conflicts over the valuation of unregistered land, or in a strong demand for land registration from the public, courts and valuers themselves. In practice, however, the situation is more complex. Only a few mortgage providers (e.g., Ghana Home Loans, Barclays, and Home Finance Company) insist on registered land as the collateral. These mortgage providers may sometimes even accept an application for registration that is incomplete. In such a case, the mortgage providers will discount the loan by how much it will cost to register the title. There are also many banks in Ghana that are more flexible. A survey by Domeher *et al.*, (2012) showed that:

- Banks of different orientation (such as commercial, rural development, agriculture) differ in what evidence they require to classify land as acceptable collateral security.
- The majority of banks in Ghana do not insist on registration. Indeed, some banks even accept allocation notes (non-registered notes that uniquely pertain in the Ashanti region) as indicative of possession.

Case law has clearly established that western principles concerning registration (the idea that registration gives indefeasibility of title, voidable only on grounds of fraud)

are inapplicable in Ghana. One major study (Abdulai and Owusu-Ansah, 2014) reviewed the decisions of the High Court of Kumasi over a 10-year period. It found that, of all the 91 cases involving registered land, a majority of the decisions (53 percent) favoured unregistered land. For the remaining 47 percent of the cases that favoured registered land, the courts relied on both unwritten and written evidence. For example, in *Amuzu v Oklikah*, the court was asked to decide whether registration confers indefeasibility of title. By a unanimous decision, the Supreme Court of Ghana court held that '*the Land Registry Act, 1962 [...] did not confer a State-guaranteed title on the holder of a registered instrument*' (Date-Bah, 2015, p. 191). S.K. Date-Bah, Ghana's pre-eminent jurist, observes in relation to this case that '*it was thus only just and proper that equity should play a role to restore the balance of justice*' (Date-Bah, 2015, p. 191). In short, the Ghanaian courts have jettisoned a western test of security of tenure, preferring instead to declare support for the universal principle of 'equity'.

The nature of the system of land use and ownership in Kenya is, therefore, quite clearly primarily customary and informal. What requires further analysis is how, in such a context, professionals value land.



**Figure 4.2** Settlements on unregistered land in Accra



Image source: Authors' Fieldwork, 2016

### 4.1.2 Valuation practice

Table 4.1 contains the results of interviews with valuers from some leading valuation firms in Ghana. These results are consistent with the findings of other studies (e.g., Obeng-Odoom and Ameyaw, 2010; Obeng-Odoom and Ameyaw, 2011). A more recent study supported by RICS shows that, of all valuations conducted between 2009 and 2015 at the Lands Valuation Division (LVD) in Accra:

*'Almost all the valuations were conducted both from the standpoints of the LVD [Land Valuation Division] and private practitioners with the replacement cost method of valuation'* (Awuah et al., 2016, p. 23).

Furthermore, the majority of reports prepared for the qualifying examination for professional membership of the Ghana Institution of Surveyors (GhIS) draw on the replacement cost method of valuation (Ezaah, 2007). An examination of the reports submitted for qualifications of the GhIS in 2015 confirms that the cost approach enjoys much use.

How is the cost method used? When using this method, Ghanaian valuers typically go through three stages:

- First, they estimate the gross replacement cost
- Next, they ascertain depreciation
- Then, they assess the value of the subject land, which is given by two simple equations:

**Table 4.1**

**How frequently the leading valuation firms in Ghana use the Cost Method**

Valuation firm	Share of Cost Method valuation
KOA Consult, Accra	80%
Quaynor Consultancy Services, Tema	90%
A.K.Baffoe and Co, Kumasi	85%
Asenta Properties, Kumasi	90%
Valuation and Development Services, Accra	90%

$$GRC - D = NRC$$

**Equation 1**

$$NRC + LV = PV$$

**Equation 2**

Where:

GRC is Gross Replacement Value

D is Depreciation

NRC is Net Replacement Value

LV is Land Value

PV is Property Value

The procedure looks neat and simple but, in practice, it is a labyrinthine process, involving several twists and turns.

## Calculating GRC and depreciation

The gross replacement cost (GRC) is the cost of producing a substitute property as new or functionally similar to the subject property (see Scarrett, 2008, pp.162-163 for other ways of estimating cost). In practice, such costs would typically be obtained from bills of quantities (BOQs). These are prepared by quantity surveyors who consider current labour and building materials costs in their estimates. More diligent valuers usually take their cost figures from BOQs which have undergone tendering, because such BOQs are deemed to be slightly more reflective of the 'real' market value.

The second stage involves estimating accrued depreciation to reflect physical defects, functional and economic obsolescence (for a discussion, see Albritton, 1982, Mansfield and Pinder, 2008; Hackman and Scott, 2008). Surveyors in Ghana often grapple with how to produce one figure for all the aspects of depreciation. Gyamfi-Yeboah and Ayitey (2006, pp. 8-9) propose a 'decomposition approach' to the problem, involving:

1. estimating the individual contribution of each component of depreciation;
2. determining a weight for each component
3. estimating a combined depreciation rate by multiplying the individual contribution of each component by the weight attributed to each component and combining these values.

However, in practice, such 'academic' approaches are hardly used to estimate depreciation. Instead, the valuers use their 'experience'; a colloquial way of saying that they judge how much investment is required to restore the property to its new state.

A more structured way of estimating depreciation is to make reference to reflect on how much each part of a building contributes to the total cost – and estimate how much depreciation should be ascribed to the various parts of buildings. This estimate of depreciation is deducted from GRC to arrive at net replacement cost (NRC).

## Estimating land value and property value (PV)

In theory, the Market Comparison approach should be used in this stage of the process to estimate land value. That is, comparable land values would need to be found for the property in question, assuming it is vacant and put to highest and best use. Most theories of land valuation hold that the comparables must come from the same neighbourhood, or class of neighbourhood, if there is limited information in that neighbourhood (Johnson et al., 2000). One way to go about this process is to consult other valuers who are knowledgeable about the location or class of location where the property in question is located. Another way is to obtain information from conveyancing documents lodged at land sector agencies. A key component in this process is the availability of information about land transactions. Ayitey et al. (2006) suggest that, in practice, valuers usually consult one another for information

about comparable properties and supplement it with information from conveyancing documents, if these are readily available.

The method for using this land transaction information to arrive at 'land value', is, however, complex and often contingent on the type of land under consideration. Generally, valuers either:

- a. use the capital value of the comparable land without adjustments
- b. use the capital value of comparable land, but with some adjustments for differences.

The resulting figure is deemed the land value. To obtain PV, the land value is added to NRC as described in Equation 2.

## The application of the Cost Method to the valuation of squatter and stranger settlements

The interviews conducted in Ghana showed that, as the interest (or bundle of rights in property) is what is valued, **squatters** do not tend to be compensated for land taken because they have no such interest in the land. They may, however, be compensated for disturbance and the cost of their structures, depending on the conditions specified in a development loan agreement. Since the early 2000s, international development bodies such as the World Bank and the IMF have typically made it a condition of their loans for squatters to be compensated for their structures and disturbance whenever a squatter settlement will have to be destroyed as part of a funded infrastructural project. From the interviews, it appears that this position is informed by both humanitarian and pragmatic concerns about the likelihood of squatter uprising and the associated risk to project costs resulting from the slow down, damage, or sabotage expensive development projects if squatters are not compensated. In such cases, the valuation approach used may be a variation of the income capitalisation approach. For instance, basket weavers and quarry workers who are being displaced are paid a compensation sum based on the following calculations:

1. Estimation of average daily income, which forms the basis for an estimated monthly income
2. Multiplying this income by 6 (the assumed number of months it takes to find an alternative site for resettlement).

If the development project is government run, however, the circumstances are rather different. The government might make the case that the settlement is illegal and hence no compensation is due. That has evidently been the case for demolitions by the Tema Development Company in Adjei Kojo over the last years (Gadugah, 2016). From the interviews, it appears that typically, the Government of Ghana does not compensate squatters.

The case of **speculative squatters** is rather different. These squatters spring up to take advantage of expected compensation. They typically arise when a mining area is

declared. Acting on insider information, these opportunistic people quickly build in a proposed mining area so that they will be entitled to compensation. Speculative squatter residences are defined by professional valuers as those developments that took place after the declaration of an area as a mining area. Before compensation is estimated, mining companies tend to conduct rapid surveys, typically marking buildings that exist at the time of declaration to determine a) entirely new buildings after declaration and b) extensions that occurred after declaration. As noted by our interviewees, such speculators do not tend to be compensated, although some development loans (IMF/World Bank/African Development Bank) insist on compensation, even in this case.

When there is going to be compensation of such squatters, the mining laws require that the expropriated persons retain the services of a valuer. According to the interviews, this valuer is pre-financed by the mining company that wishes to acquire the land and the valuation fee is eventually offset against the compensation that the expropriated persons receive later. Such valuers will typically use the depreciated replacement cost (DRC) for the calculation of the replacement cost of any structure on the land that is being acquired. In some cases however, no depreciation may be used, especially if the project is IMF/World Bank/AFDB funded. In contrast, projects funded by the Ghanaian government may still have depreciation calculated and applied. When there are no structures or there are no economic activities taking place on the land, a variation of the income capitalisation/profits approach can be applied. This technique is often used to estimate the value of investment properties by capitalising the incomes of such properties over their investment periods at an appropriate yield (see Nzioki et al., 2013, pp. 41-43 for more detailed comments on valuation methods).

**Strangers** are another class of inhabitants recognised under the law in Ghana. They are legally differentiated from squatters because they have the approval of the landowner to use land. However, they do not have land title and hence have no legal interest in the land they are occupying. They therefore do not receive compensation for the loss of land, but they are entitled to compensation for the loss of structures, farms, use and disturbance. Although these claims are much stronger under some forms of development loan, they nevertheless exist when governments have to compensate people residing on land that is due for development. Strangers therefore have stronger claims to compensation than squatters.

Compensation estimation (for either stranger or squatter settlements) may entail room-for-room or space-for-space assessments. In this case, the compensation is based on room equivalence to the destroyed property. The room size used to calculate compensation is based on the standards provided by the building regulations. These standards also dictate that the replacement will need to have all the facilities required to make a building habitable, even if the affected property did not have such facilities (e.g. a toilet and kitchen).

**Undervaluation** is a major valuation challenge in Ghana. A case in point is the (as it was then called) Land Valuation Board of Ghana's underestimation of compensation for land owners who had given up their land for the Boankra Inland Port Project<sup>1</sup> in 2002. The underestimation happened because the board used a top-down crop enumeration approach without much meaningful investigation into what depriving the farmers of land would entail. Such state-led valuation processes are inadequate because, even where they use market values rather than mere crop enumeration (as in the Boankra Project), the Land Valuation Division only references the market value and tends to ignore the cost of disturbance to affected people in compensation valuations (see Larbi et al. 2004; Larbi, 2008; Aryitey et al., 2011).

A more recent case (Asamoah, 2014) involves the valuation for compensation of land required for building a gas pipeline. In this example, the Government of Ghana appointed valuers who only had limited contact with local people. In turn, the valuers did not understand the full scope of losses incurred by those that were expropriated. There was no effort to reflect what 'value' actually meant to those displaced people and the valuers' estimate of 'value' was a gross underestimate. Such jarring experiences have been reported in other settings too. Consider the experiences of local people living on unregistered land in areas acquired for the construction of dams. Whether it is Akosombo or Bui, usually valuers with neither local knowledge nor a predisposition to investigate the social context of value, offer technical estimates of 'value' that dramatically differ from how affected local residents understand the 'value' of their land and property (Tsikata, 2006; Owusu-Ofori and Obeng-Odoom, 2015; Hausermann, 2018). As one of such people has noted:

*'I had six acres of cashew ... The Land Valuation Board decided every acre contains a maximum of 60 trees ... and each tree is worth 10 cedis. So they gave me 4900 cedis ... the amount was not fair because one bag of cashew is now 500 GHC. And those cashew trees would have provided income for many years'* (Hausermann, 2018, p. 8).

Hausermann also states that local people:

*'identify the roles experts (e.g., land valuation officials) play in documenting land-use and agricultural production. Metrics and calculations, seemingly neutral, technical "tools," value farm "worth," with no input from farmers themselves. Social relations, meanings, and long-term values embedded in land and farming practices are erased as simple calculations determine how much money a farmer receives'* (Hausermann, 2018, p. 8).

Overall, the evidence from Ghana highlights both solutions and problems. Within the country's land tenure system, the innovations within the system concerning the adaptation of well-known valuation techniques to the peculiarities of the Ghanaian property market serve the valuation industry well. However, opportunistic activities by individuals and issues of lack of data are apparent and are not limited to the valuation of unregistered land, serious as they are. These insights can provide cues for investigating approaches to the valuation of unregistered land in Indonesia.

<sup>1</sup> The project, in which one of the authors was involved as an observer, entailed a plan to develop large parcels of land in the Ejisu Juaben district of the Ashanti region of Ghana.





Image source: Bart Vos / Shutterstock.com

## 4.2 Indonesia

The insights provided in this section are based on interviews with practising valuers, teachers of valuation and state officials in Indonesia. As with Ghana, valuers in Indonesia have improvised approaches to valuation that can be conducted without the need to seek registration. These local practices have for the most part either received judicial endorsement or rebuke, where necessary. This case study is therefore divided into three parts, respectively detailing the land tenure system in the country, the valuation practice for unregistered land and the resulting outcomes.

### 4.2.1 The land tenure system and unregistered land

The Indonesian land tenure system is characterised by a legal pluralism rooted in its colonial experiences. The Dutch instituted a western property law system in which private land ownership was encouraged and celebrated. This property law system (to which the Dutch were subjected) was implemented alongside the customary, *adat* system, based on customs and grounded in more communitarian identity. The land in the *adat* system is sometimes called *tanah ulayat* and recognises individual ownership. The rules of land tenure in different places in Indonesia vary, but they are always a reflection of the customs of different and diverse local groups (Tegan, 2015).

The land governance system is based on principles of co-operation and deliberation both in times of agreement and conflict. The land in the western system, on the other hand, is based on individual rights, which can only be exercised by taking into account national and municipal laws. Conflicts over land ownership and use are solved through a competitive and combative legal process in which one party wins and the other loses (Tegan, 2015). It is this dual structure that makes it possible for different laws to be applied to different peoples.

After achieving independence, the Indonesian government tried to dismantle the dual system by developing the Basic Agricultural Law of 1960 (BAL). This law claims to be founded on *adat* because it recognises land as having a social function. By implementing the BAL, the government intended to integrate the *adat* system into one complete system of law, instead of the two-tier pluralist legal system. Under BAL, land registration is not only encouraged, it is assisted. The Government's programmes of Proyek Operasi Nasional Agraria, PRONA for short (applicable nationally) and Proyek Agraria Daerah or PRODA (applicable at the district level) were meant to offer financial support to all those poor households for whom registration was too expensive (Grimm and Klasen, 2015). *Adat* community land (*Tanah Ulayat*) may be registered under BAL through either PRONA or PRODA. The resulting interest can be either freehold (*hak milik*, HM) or leasehold.

There are three possible types of leasehold:

- **hak guna bangunan:** building lease, often with a term of 30 years, to be renewable periodically
- **hak guna usaha:** agricultural lease, often for large plantations/corporations and with a term of 25-30 years renewable
- **hak pakai:** leasehold for foreigners often quite rarely given in practice, although new regulations may make this tenure type more common (personal communication with BPN Staff, Dec 12, 2016).

Theoretically, it takes 3-4 months to register land. In practice, it can take around 12 months (personal communication with BPN Staff, Dec 12, 2016).

Despite the PRONA and PRODA systems having been in place since 1960, only a few parcels of land are fully registered under BAL. Even in Jakarta, the biggest and most prominent city, only 3 out of every 10 parcels of land is registered (Zhu and Simarmata, 2015). Currently, only 44 million parcels of land are registered compared to the target of 120 million parcels by 2025 (personal communication with BPN Staff, Dec 12, 2016). Despite efforts by the government to integrate adat into national laws favouring registration, most land parcels are managed solely under *adat* or have been settled by squatters. These squatters may possess a variety of documents (Fitzpatrick, 1997; Grimm and Klasen, 2015; Zhu and Simarmata, 2015) as evidence of their rights to the land. This evidence can include letters from village heads, sale contracts between individuals (sometimes called *garapan* land), and tax certifications or receipts (*girik*). This portrait of the Indonesian land economy raises questions about what happens to the vast unregistered land in the event of acquisition in the public interest.

#### 4.2.2 Valuation Practice

Valuation in Indonesia is guided by the Land Acquisition Act – Undang-Undang Republik Indonesia No. 2, 2012 (shortened as U-U 2, 2012, and hereafter the Land Acquisition Act) and *Kode Etik Penilai Indonesia* (KPSPI, National Valuation Standard of Indonesia), which was published in 2013 (revised in 2015). Together with the Land Acquisition Act, KPSPI (2013/2015) has attempted to streamline valuation theory and practice.

For the purpose of the Land Acquisition Act the compensation process entails four steps; planning, preparation, action and reporting. Valuers are needed at both the planning and action stages. At the planning stage, the valuer helps with valuation estimates for budgetary purpose, while at the action phase, the valuer actually makes an estimate of value.

The appointment of the valuers warrants some discussion. For ethical reasons, valuers employed at one stage cannot legally be employed at another. Generally, any valuation for a project exceeding 50 million Rupiah must be put to public tender. If the project is worth less, the government agency that wishes to acquire a piece of land can appoint the valuer directly. The method by which valuers execute their work is contingent on the characteristics of the property that they have been tasked to value (for notes on the valuation methods usually adopted by valuers, see Nzioki et al., 2013, pp. 41-42). Technical details and illustrations can be found in the leading and only valuation book on Indonesia, *Memahami Nilai Penggantian Wajar: Penilaian Terkait Pengadaan Tanah Untuk Kepentingan Umum* (Yusuf, 2016), whose author was engaged extensively as part of this research. Some technical illustrations have also been offered in the literature (Putra et al., 2013; 2016).

#### Valuation of Land Without Title

There are broadly two types of land that are unregistered in Indonesia. The first is land settled by squatters, typically along riverbanks, railway lines, and streets (Silas, 1989). The second is land for which only use rights are held, that is, for tenants of buildings.

**Squatter settlements** have been the source of recurrent state attacks and those living in these settlements do so under persistent uncertainty (Peters, 2009; 2013; 2016). Squatter settlements are considered eyesores, homes of criminals, and impediments to development. While uncertainty over the future of such settlements make residents less likely to invest in them (Silas, 1989; Peters, 2009; 2013; 2016), pro-titling scholars often overlook whether this lack of interest to invest in squatter settlements is the result of lack of land title or the recurrent attacks by the state (De Soto, 2000; Field, 2005, Yoo and Harris, 2015). Those scholars who are for titling assume that the lack of any formally recognised land title inhibits any initiative of residents or investors to invest in such settlements. Furthermore, Field (2007) states that gaining a land title frees labour time because people no longer have to watch over their housing and can 'go to work'. However, this view is inconsistent with the nature of squatter life in Indonesia, where there is much social regulation (Peters, 2013).

In principle, the Land Acquisition Act (2012) states that a squatter who has paid taxes and has kept land over a substantial period of time might be compensated for compulsory acquisition (Bedner, 2016, pp.72-74). However, in practice it is quite different. A commonly held view by those interviewed during the course of this research (see Table 4.1) was that residents of *kampungs*; those with no title to land are not – and should not – be compensated when they are evicted.





Image source: Bart Vos / Shutterstock.com

Unlike countries in Africa, such as Ghana, where international development agencies compel governments to compensate evicted people as part of the development loan conditions, in Indonesia, they do not. Instead, compensation depends on the kind of land title that evicted people possess. In marginal settlements – those along the riverbanks and railways (Silas, 1989) – and those in migrant areas such as Tehn Agban – many residents have no titles and they typically do not receive compensation when they are evicted. In concluding an extensive review of resettlement and compensation experiences in Indonesia, Zaman (2002, pp. 262-263) states:

*'In the absence of a national resettlement policy, the World Bank, working with the GOI [Government of Indonesia], has introduced a new strategy ...through the introduction of Gubernatorial Decrees in Aceh, Bali, North Sumatra, West Sumatra, and Riau. Basic principles on land acquisition and resettlement are covered by the decrees...[but] the decrees do not include affected persons without land titles or ownership rights.'*

Some Asian Development Bank (ADB) official documents suggest that it does not fund projects for which no compensation is given. However, according to an internal evaluation conducted in 2006 (Operations Evaluation Department; 2006), the ADB fails to take a firm stance on eviction compensation in the case of Indonesia. Those interviewed as part of this research explained that because compensation is financed by the government, development partners do not usually intervene on such

issues. As the interviewees at the Ministry of Finance noted, the Indonesian Government risks setting a precedent if it compensates those without title to land. In short, no compensation is given to squatter settlements, so no compensation valuation takes place.

Regarding the second type of **unregistered land for which only use rights are held**, (e.g. for tenants of buildings), under the law, tenants are not compensated. Those interviewed for this research stated that landlords would usually compensate their tenants from what compensation sums they have received.

These positions are not legally contested in Indonesia – even those at risk of eviction recognise they have no legal backing. Soemarno (2007) interviewed over 1,000 respondents, and found that:

*'the majority of the inhabitants of Kali Surabaya riverbank actually know that they had no right to live there. They try however, to ask the government to provide them with a sort of compensation, whatever it might be (money or land) so that they can continue with their life'* (p. 61).

Interviews conducted for this research at the Ministry of Finance confirmed that in some rare cases, humanitarian assistance may be given to evicted people without title. However, the extent and likelihood of this compensation depends on the benevolence of the government or the beneficiary government agency; it is not a right.





Image source: Bart Vos / Shutterstock.com

### Valuation of land with title but no registration

There can be two types of land with title but no registration in Indonesia; state land and *adat* land. The Badan Pertanahan Nasional (BPN) is the only authority that can determine whether such parcels of land should be freehold or leasehold. As interviews with BPN staff showed, BPN's classification is based on historical evidence. Where the historical evidence shows that the land is *adat*, BPN advises that valuation be done assuming that the land is freehold. However, if the historical evidence suggests that the land was held by the Dutch colonial authorities, BPN's advice is typically for valuers to consider the land as leasehold.

According to those interviewed, in the absence of explicit advice from BPN, compensation valuation is conducted as though the land were registered. This assumption is made for three reasons:

- First, in the absence of registration, there may be a letter or other forms of documentation which can indicate the basis for the title (whether *adat* or Dutch colonial state land).
- Second, the mere absence of registration is not indicative of insecurity.
- Third, assuming freehold is reasonable because neither the cost of renewing a freehold interest nor the cost of upgrading a leasehold interest is prohibitive.

In short, the lack of registration does not inhibit valuation. In cases where land is not registered, the usual methods of valuation (namely the cost approach, market comparison, the income capitalisation approach, residual approach, and profits method, see, for notes, Nzioki et al., 2013, pp. 41-42) can be used based on data provided by the BPN. The only adjustment made, according to those interviewed, is for the cost of registration. Unregistered land is valued at 10 percent less than registered land, on the basis that the cost of registration is 10 percent of land value. Therefore, for the purpose of valuation, *Kampung* residents whose land has title but is not necessarily registered enjoy, in essence, similar rights to those whose land is registered.

### Basis of compensation valuation

Valuation in Indonesia has improved markedly. According to the expert valuers interviewed, valuation in Indonesia was widely condemned before 2012, when compensation valuations were substantially lower than market valuations because the government wanted to keep values artificially low.

The primary reason for this change was the adoption of a more participatory valuation process. This is detailed in the valuation process guidelines *Kode Etik Penilai Indonesia* (KPSPI), written by *Masyarakat Profesi Penilai* (MAAPI, the Indonesia/Indonesia Society of Appraisers). In this process there are two components of valuation: physical and non-physical value.

**Physical value** is market value and it is calculated in the usual way (any and all the valuation methods can be used). When there is no market data, the cost method is used:

1. The cost of producing the building is obtained from Masyarakat Profesi Penilai Indonesia/Indonesia Society of Appraisers (MAAPI) data.
2. Depreciation – functional, economic, or physical – is then estimated and deducted from the cost. It is added back, if the property is based in an area where the market is inactive so that cost of reproduction/cost as new is approached. As indicated by our interviewees, if in an active market area, however, estimated depreciation is deducted on the principle that a replacement can be found in the market.
3. Land value (obtained from the market comparable approach) is then added after this exercise.

The Indonesian Valuation Standards 2015 provides guidelines covering this process. *Fair compensation value*, the basis for this kind of valuation is distinguished from *open market value* by estimating and adding non-physical value to physical value (as described).

**Non-physical value** entails:

- Premium: compensation for loss of business. Three months income is paid for shops and suchlike, while personal services business such as hairdresser is compensated at 6 months' loss of income.
- Solatium: compensation for personal and social losses. Solatium helps to deal with different cultural and spiritual activities that accompany that transfer of land rights.
- Transaction costs including professional fees.
- Waiting time: compensation for time waited/wasted between when the compensation is calculated and when it is actually paid. It is based on bank interest.
- Severance and injurious affection of the remainder, such that land which is not acquired but is injuriously affected is also compensated.
- Other physical disturbance, e.g., destruction of plants.

From the interviews, these considerations are much more detailed than the previous government-dominated system and they have been much more effective too.

**Under-valuation** has been common. This challenge arises partly because of a partial understanding of context, partly because of weak capacity of valuers, and partly because of non-compliance with collectively developed valuation standards. Sometimes, the standards are also problematic. For example, although the government tries to compensate for waiting time, the valuers interviewed did not feel that the compensation sufficiently accounts for the inconveniences that affected people experience (see also Putra et al., 2013; 2016).

Indonesian courts have been the forum for many legal contests over land registration. Customary land in West Sumatra alone was the focus of 116 court cases between 2004 and 2008 (Tegan, 2015). There have been many instances when the courts have ruled that valuations should be revised and significantly increased, leading to more satisfactory outcomes for people displaced from their unregistered land. Fitzpatrick's (1997) study of the decisions of the Indonesian courts is revealing. The courts in Indonesia have not really accorded indefeasibility status to title registration as they prefer to rule on a case-by-case basis. As one interviewee from BPN stressed, the courts answer to the question, 'is the title certificate indefeasible' is 'it depends'. That is, the certificate can be contested on grounds of stronger evidence such as historically established claims to ownership. Such evidence, when established, tends to be more holistic. Rather than merely reliant on legalistic claims of registration such evidence tends to be rooted in a range of social circumstances. Indeed, registered titles are voidable. Contrary to what proponents of registration contend, no automatic indefeasibility privilege is given to holders of title certificate in Indonesia.

In summary, as with Ghana, Indonesian valuers have adapted established valuation methods to value different types of land/tenure – whether registered or unregistered. Registration is contested vigorously in Indonesian courts, whose decisions seek to endorse the approach adopted by local valuers, if the approach is reasonable. Compensation valuation is not hindered by the lack of registration, although there are major challenges to compensation and compensation valuation in Indonesia. Such failings are less related to the lack of registration; they can be substantially mitigated by making the process of valuation more participatory.





Image source: Inspired By Maps / Shutterstock.com

### 4.3 Peru

While our case study in Peru provides different lessons to those of Ghana and Indonesia, it does not invalidate them. Rather, the diversity of contexts highlighted by these case studies reinforces the need to develop an understanding of the complex social dynamics of each particular domain, before deciding upon the optimal methodology (or methodologies) for the valuation of unregistered land. That is, examining the social dynamics (in general) and the various property rights (in particular) in any domain is more likely to achieve an acceptable notion of value for unregistered land than working on the assumption that what works in one context will therefore work in another.

Informality is particularly widespread in Peru and the wider Latin American region and the economic case for title registration has been debated for years. Peru led the world in implementing such registration, via an organisation called El Organismo de Formalización de la Propiedad Informal (COFOPRI).

In Latin America, unregistered land is a particularly important issue. According to UN-HABITAT:

*‘Latin America is the most urbanized place on earth [...]. Over three-quarters of the region’s population live in cities, and this proportion is only increasing. The industrialization of agriculture and rural depopulation are driving more and more people to Latin America’s urban core and creating endless metropolises. The dramatic increase of a generally low-income, unemployed population has made the provision of housing a primary issue ... As a result, a large proportion of the urban population live in informal settlements—densely packed into peripheral urban space. In 2005, one third of Latin America’s total population lived in slums’ (UN-Habitat 2011, XV).*

Fernandes (2012 [sic: 2011], 6-7) identifies the legal, social, environmental, political, and economic burdens associated with informal land ownership. These issues include a lack of legitimate citizenship, exclusion from public services, safety and health hazards, discrimination and stigmatization and economic inefficiency (ibid.) (Westberg 2014). In addition, de Soto’s well-known work (for example De Soto 1989 and 2000) emerged from his experiences in Peru, some of which can be seen in Figures 4.3 to 4.5. In particular, lessons from the process of registration in Lima may be applicable elsewhere, not only in Latin America, but worldwide.



**Figure 4.3**

**COFOPRI registered houses at Amplicacion Bahia Blanco, in the Lima District**



Image source: Authors' Fieldwork, 2016

**Figure 4.4**

**A family building their new home on COPOFRI-registered land**



Image source: Authors' Fieldwork, 2016



Figure 4.5

Informal Housing beside the formalised housing above. Note the provision of electricity



Image source: Authors' Fieldwork, 2016

### 4.3.1 The land tenure system and unregistered land

Worldwide, there are four main formal legal systems affecting land tenure systems and their administration. These systems are not mutually exclusive; many legal domains have a number of these legal systems operating concurrently. These are:

- Common law, which applies to most of the people on Earth and where court decisions are fundamental.
- Roman or Civil law, which applies over most of the Earth's area and in which codes (collections of laws) are fundamental.
- Statute laws written by a legislature.
- Religious laws, written by clerics.

Peru's land tenure system is based on its Civil Code, which recognises a wide range of tenures (including ownership) that may be jointly, individually or communally held. Peruvian law also recognises communal rights, rights to possess and rights to lease. Communal rights are known as *comunidades*, and are the means by which most rural communities hold land. The general assemblies of such communities can 'give, rent, sell or mortgage' (USAID 2010, p.5) their lands, provided at least half the assembly concerned agree in the case of coastal communities,

and two-thirds in the highlands and jungle regions<sup>2</sup> (ibid). Peruvian law recognises surface rights, easements and usufruct. Land can be mortgaged and pledged:

*'The above-mentioned rights are purely contractual between parties, notwithstanding that registration before the Public Registry grants publicity and enforceability against third parties. Only in the case of mortgages is registration with the Public Registry a requisite for validity'* (Mayorga and Simons 2016, n.p.).

These varied forms of tenure are the result of land reforms that were mainly carried out by military dictatorships in the latter half of the twentieth century:

*'From 1968 to 1980, Generals Juan Velasco Alvarado and Francisco Morales Bermúdez and their coalitions implemented a set of radical reforms known as the 'revolution from above''.* (Albertus 2015, p.108).

Before these reforms were implemented, Peru had the narrowly concentrated tenure distribution typical of colonised areas worldwide, with a few wealthy landowners on the one hand and impoverished masses on the other. These reforms were implemented quite visibly and radically. Land expropriation from wealthy land owners was conducted at the land values that had been declared for rating and taxing purposes. As a result, the amounts paid to

<sup>2</sup> The highlands are called *sierras*, the jungles of the Amazon basin *selvas*, and the flat, dry coastal regions *costa*. They make up Peru's three main geographic divisions. As far as their populations are concerned, there are no cities anywhere in Peru remotely close to the population of Lima, described as "the head of a giant on the body of a dwarf" (Chambers 2005).

land owners were often only a small fraction of the market value of the land. These expropriations were paid for in government bonds, prompting further losses in the value of payment received via inflation (Albertus 2015, p.115). Albertus argues that:

*'expropriating powerful pre-existing elites can serve to demonstrate a dictator's loyalty to his launching organization while destroying elite rivals out of government that nonetheless have the capacity to threaten the dictator's survival. Expropriating pre-existing elites also serves the complementary function of providing resources to buy the support of key non-elite groups that could otherwise organize destabilizing resistance to the autocrat's rule.'* (ibid, p. 131).

Land registration in Peru has been provided to the urban poor since 1990. This was first provided under the Fujimori government (with the assistance of the World Bank) and was subsequently provided (from 1996) under COFOPRI; a tactic that has ensured political capital for the *Fujimoristas* to this day. However, by attaching the registration of informal properties to a political cause, the government has entrenched political debate over the issue of land registration. This has provoked criticism from media commentators and property experts because discussion of land in this context is not primarily focused on addressing the needs of the poor.<sup>3</sup>

### 4.3.2 Valuation practice

Valuation in Peru is guided by the National Appraisal Regulations of Peru, the most recent version of which was gazetted as Ministerial Resolution No. 172-2016-Housing in July 2016. Article 7, describing what is required in the contents of a general valuation report, makes it quite clear that registration is not necessary for the valuation of land in Peru:

*'Article 7 – Registration status of the property*

*7.1 In the case of registered urban properties, the registration number of the Register of Buildings is indicated, specifying the identity data of the holder of the right of ownership or possession registered under Legislative Decree No. 667, which approves the Law of the Registry of Rural Premises, where appropriate.*

*7.2 In the case of non-registered properties, the documents certifying the possession are recorded, stating the date, the type of public or private document, the official issuing it and other characteristics that the expert considers relevant.'* (Government of Peru, 2016, Article 7).

The same provisions are applied to rural and agricultural properties in Article 61. In all other aspects, the regulations apply the same principles and practices of valuation to registered and non-registered properties.

The Valuation Standards of *Cuerpo Técnico de Tasaciones del Perú*<sup>4</sup> (the governing body of the valuation profession in Peru) also provide guidance on how to value unregistered land and on the process of recording different kinds of documents that can be used to certify possession. For example, those who pay taxes over informal land are usually prima facie assumed to be the owners. Valuers are trained with the National Appraisal Regulations of Peru and valuation is taught by members of the institute as a single subject given within a civil engineering course. Graduates are required to attain a sufficient level of practical experience in valuation before they can be admitted into the institute. Once admitted, these graduates are required to engage in a programme of continuing professional development.

### Valuation of land without title

Despite the provisions for valuing unregistered land in Articles 7 and 61 of the National Appraisal Regulations of Peru, a Peruvian consultant interviewed as part of this research revealed that valuers (*'tasadores'*, as they are called in Peru), are not involved in the valuation of unregistered land at all and are excluded from land disputes concerning unregistered land; they operate exclusively within the formal system. They may know of such valuations, but they are not involved as professionals.

The space between informal markets and the poor gaining registration from COFOPRI is being filled by professional land invaders and their associates. These *traficantes de tierras* (pirates), as one interviewee called them, are often well-connected professionals such as lawyers and engineers. Within their networks, these people are able to identify suitable land and may speculate on it for some time. Once identified, the professional or individual's contacts will set about building and demarcating the patch of land. In some cases, according to those interviewed, this will include setting up a community ownership organisation. These squatters are very difficult, if not impossible, to remove, after even only 72 hours. This kind of speculative squatting can occur on either state or private land, although it is easier to remove them from the latter than the former because a) the Peruvian Constitution gives Peruvians the right to land and b) public land is not registered.

While these invaders are not provided with a water supply or sewers until formal title is granted, they are allowed access to electricity. It is from the payment of their electricity bills that a claim to ownership can be made under Articles 7 and 61 of the National Appraisal Regulations of Peru. If squatters have occupied land for ten years or more without that occupation being formally disputed (provided certain other conditions are met), Peruvian law recognises their right to ownership of the land. However, if a challenge is made to this ownership at any point over the ten years,

<sup>3</sup> Furthermore, cases flowing from those expropriations continue to this day, see for example Coppola [2016]. <sup>4</sup> Established in 1889, it was recognized by Law No. 6761 of February 5, 1930. All its members are engineers and architects who specialise in valuation. This institution is a legal person, constituted as a civil association by Supreme Decree No. 041-2001-MTC of July 26, 2001.



the clock starts again. This process has been tolerated because there is no other way to address the scale of demand for land to house the poor. Consequently, such squatting and later formalisation by COFOPRI has become the main way of addressing that demand.

Because of the high costs associated with establishing new infrastructure, mains water and sewage systems can only be supplied once COFOPRI has granted an ownership certificate. Once this ownership certificate has been supplied, anyone who has defaulted on debts owed to service providers can then be located. In the meantime, entrepreneurs supply potable water to these settlements via tankers.

In the early days of titling (from 1990), inefficiencies, corruption, cronyism and the invasion of unregistered land that is vulnerable to flooding and earthquakes by *traficantes* seeking to profit from housing the poor, meant Peru's land administration system was notorious as one of the most corrupt areas of governance worldwide (Quan 2016). Consequently, there are 'record-keeping problems associated with 90 percent ... of the titles delivered prior to 1995' (Hines 2001, p. 81). However, from 1996 onwards, COFOPRI has gradually but significantly improved the

situation. Those interviewed as part of this research (who addressed the topic) stated that COFOPRI's work was now providing benefit to the poor. As stated by Consultant Two, from the 1960s to the 1980s, there was a genuine social need to organise land invasions to house the poor. This has achieved demonstrable impact:

*'Over the past 20 years, the nation's Commission of Formalization of Informal Property (COFOPRI) has carried out a series of land formalization projects that have produced cadastral maps for the titling of over 2.3 million urban lots located in informal settlements'* (Endo, Alarco and Triveno 2016, n.p.).

However, in more recent years this process of squatting and later formalisation by COFOPRI has become more like a business. While profits for these services are mainly collected from the rural to urban immigrants, the prime plots are often kept by *traficantes* to gain further profits once the area becomes better established. The process is facilitated by political patronage. About 40% of those initially buying the plots will subsequently profit from selling them and use those profits to move on and repeat the process in the next invasion.

**Figure 4.6**

**A water tank of Sedapal, the public water supplier**



Image source: Authors' Fieldwork, 2016

Despite the stated lack of professional involvement in land valuation in Peru, conventional valuation methodologies could be applied without registration. Even the professional land invaders can be 'knowledgeable, prudent, and [acting] without compulsion', as required if transactions are to be of evidentiary worth to a valuer. Such invaders would undertake a hypothetical development approach to the invasion in order to fit market value definition. That is, they would ask themselves what they will get for the land when they sell it, what will be their costs and risks in getting those values, and what profit and risk factor would they need to make it worth their while? Taking all that into account, how much is that land worth to them? Similarly, if those buying the land from the invader/developers question the market with a rigour that the market concerned considers is good enough to meet the conditions of the definition of market value, the valuer can also consider the use of such sales as evidence of market value.

We found no evidence from our interviews that such valuations have been undertaken by professional Peruvian valuers in these markets that have emerged from COFOPRI's activities. However, absence of evidence is not the same as evidence of absence.

However, the financial, commercial, informational and other difficulties of implementing valuation principles and practices in these markets should not be insurmountable. Researchers have already enquired about informal asking prices, thereby embarking on the path of enquiry that valuers must take much further. A valuer has to adequately determine the circumstances of any sales to be used as evidence. In the hands of a valuer, once enough are gathered to provide a consistent overall picture, such research as has been already carried out may succeed in establishing values that are arguably robust at the heuristic level.

However, they still cannot be relied upon by a professional valuer. Only concluded sales evidence can be so relied upon: and not all that evidence. First and foremost, the valuer must examine the circumstances of the sales to see which may be tendered as evidence. Those we interviewed who are experienced in interviewing parties to a sale reported that, once suspicions are dissolved and trust is established, people are often very willing to discuss the sale, as it is a matter of great importance for them to know if they did the right thing under the circumstances.

Only those sales whose circumstances the valuer considers fit the market value definition's requirements well enough should be tendered as primary evidence for a professional-level valuations. Only after due diligence enquiries have been made, and the valuer has determined that not enough primary evidence is available, may a valuer retreat into secondary evidence such as heuristics.

The valuation is only as good as the evidence and the valuer's interpretation of it, so if the evidence is weak, so is the valuation. Once again however, the perfect should not be made the enemy of the good: the valuer should qualify the valuation accordingly, but still proceed with it if the markets themselves do.

### Valuation of Land with COFOPRI registration

Consultant Two (C2) stated that there are some benefits to registering land. For example, in an area C2 has studied, registration by COFOPRI increased the land value by approximately 50 percent, compared to the original land value when unregistered. Comments from COFOPRI staff indicated that one may have to pay in the region of USD1,500 to USD3,000 to gain possession of an informal plot. Of course, there are a great many variables affecting the valuation of land, not the least of which is the time taken for COFOPRI to register the property. Consultant Two also plans to initiate studies in this area that could help pave the way for professional-level valuations of unregistered land.

When it comes to professional valuations in COFOPRI-established areas, there are special factors that affect property valuation which the valuer will have to consider. One example is the trend to establish buildings on the small site that are gradually developed, floor by floor, as the families' financial circumstances improve and their children grow. While the land on which these buildings stand has been formalised, the buildings' themselves and the standards of construction and design have not.

The taller these buildings get, the more concerned some are about their structural robustness. In particular, as Lima is earthquake-prone, there are prudent concerns (in terms of the market value definition) concerning buildings' ability to withstand earthquakes.<sup>5</sup> That is, when comparing sales evidence, a valuer is required to pay greater attention to this issue than those in other parts of the world. To address these and many other related issues, COFOPRI's Executive Director advised that they are now looking beyond land towards providing standards for housing and services.

The majority of building activity in Peru is informal. About 70 percent of Peruvians build their own homes, (as in Figure 4.7), which accounts for over 60 percent of the cement sold in Peru and a significant proportion of brick and steel, which is manufactured in Peru (Swiss Contact 2016).

<sup>5</sup> In addition to the "Pontifical Catholic University of Peru [PUCP] and other institutions hav[ing] been working to improve the structural safety of earthen houses located in seismic areas of Peru for the last four decades" (Serrano et al. 2016), Consultant One advises that the World Bank looking at ways and means to address this concern. However, Serrano et al. report that "not one person in the rural Peruvian Andes has independently built his or her house using the proposed reinforcement techniques".

Figure 4.7

As funds improve, buildings grow upwards on the small lots



Image source: Authors' Fieldwork, 2016

Research conducted elsewhere in Latin America indicates that there are indirect intangible benefits to land registration, albeit sometimes more intrinsically valuable than the merely monetary. These include, but are not limited to:

- Smaller families and more education for the children (Field, 2003 and Galiani and Schargrodsky, 2010).
- Increases in housing investments (Field, 2005; Molina and Soderbom, 2011) and supply of labour (Field, 2007).
- Increased income and consumption (Galiani and Schargrodsky, 2010).
- Improved nutrition and health (Galiani and Schargrodsky, 2004; Vogl, 2007).

One phenomenon reported by recent research into valuation in Peru is that of Gutierrez and Molina (2016): for all practical intents and purposes, informal land markets ignore the protocols required by COPOFRI land registration, because the market does not consider the registration itself to add value beyond its cost in the relevant transaction. That is, registered land may be treated by the market as more akin to unregistered land; a kind of halfway house that can provide lessons for valuations of both registered and unregistered land, especially as the bases of valuation in both cases are similar.

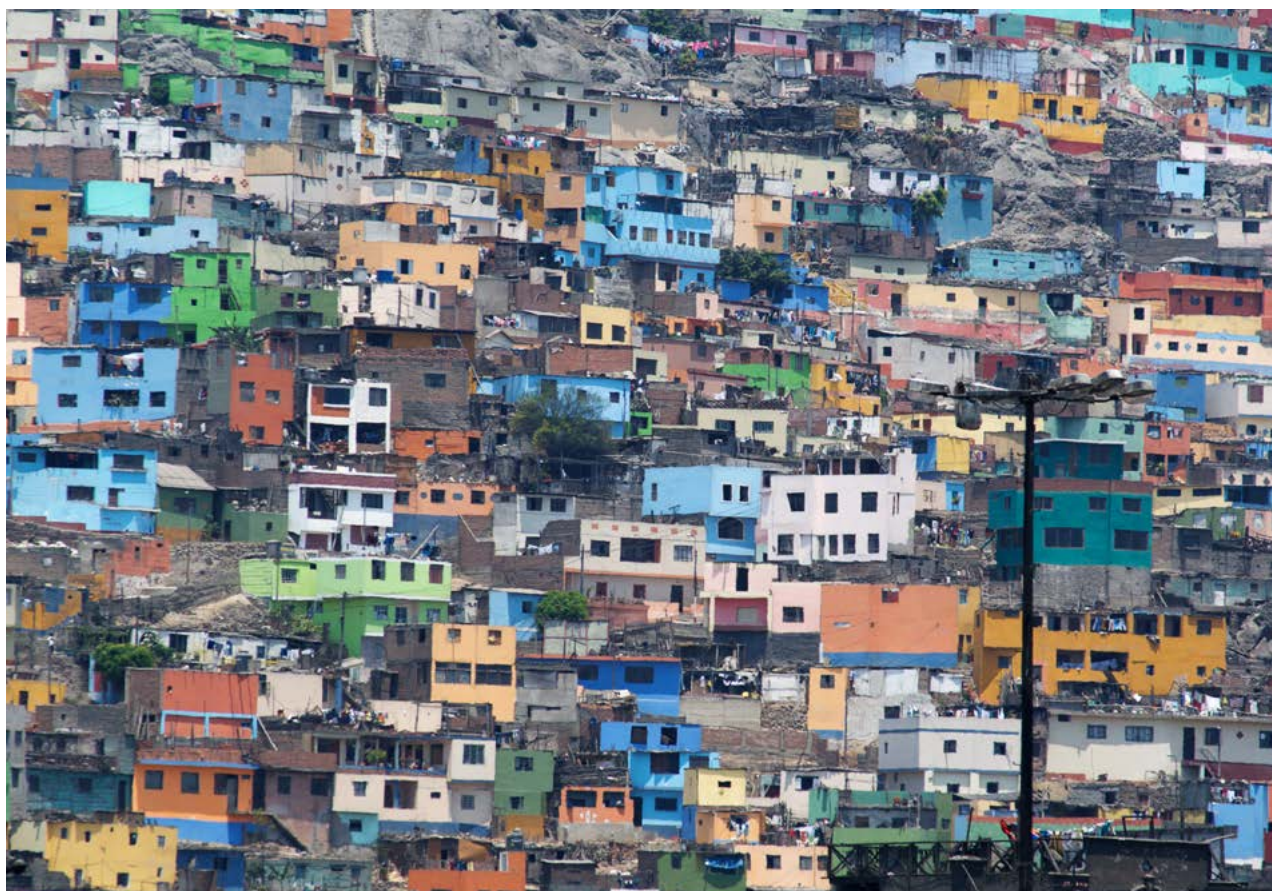
### Basis of compensation valuation

Under Article 70 of Peru's 1993 Constitution, property is inviolable:

*'The right of property is inviolable. The State guarantees it. It is exercised in harmony with the common good and within the limits of law. No one may deprive himself of his property except exclusively because of national security or public necessity, declared by law, and after payment in cash of a compensated indemnity that includes compensation for any damages. There is action before the Judiciary to answer the value of the property that the State has indicated in the expropriatory procedure.'*

The legislation covering compensation valuation is the 2015 Legislative Decree No. 1192 – *Framework Law on Acquisition and Expropriation of Real Estate Property, Transfer of State-Owned Property, Release of Interference and Other Measures for the Execution of Infrastructure Works* (hereafter 'the Decree'). This decree states that valuations should be conducted in accordance with the National Appraisal Regulations of Peru. While these regulations often refer to market value, neither document defines what 'market value' means. Furthermore, under Article 13.2, the Decree states that parties subject to





eviction require compensation for disturbance, but makes no specific allowance for other heads of compensation such as injurious affection or severance. However, subject to expert Peruvian legal opinion, it remains possible that if sufficiently broadly interpreted, the term 'disturbance' in Article 13.2 could be interpreted to admit such economic losses resulting from expropriation, provided that they were sufficiently supported by appropriately authoritative evidence.

Internationally, 'solatium' is a head of compensation payment that provides solace for having one's property taken. There appears to be no reference to solatium in the Decree, despite research (Rao 2018; Field, 2003; 2005 and 2007; Galiani and Schargrodsy, 2004 and 2010; Molina and Soderbom, 2011; Vogl, 2007) indicating that the intangible benefits solatium is intended to compensate for are among the most significant benefits of all. Peru is a signatory to the FAO's Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VGGT). Article 18.2 of the VGGT states 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.'*<sup>6</sup>

With traditional societies in particular, where social, cultural and religious ties to the landscape and other people are highly valued, there is no reasonable way to account for such values in the context of compensation by applying a percentage of the market value to them. In the context of identity construction and maintenance, traditional landholdings can be fundamental to social identity. Consultant One pointed out that one does not obtain compensation for informally held land, meaning that this recommendation of the VGGT has not yet been applied.

It appears that the Decree will not readily result in the 'before and after' principle<sup>7</sup> being fulfilled when it comes to the valuation of unregistered land. The Peruvians' experiences have confirmed that resettlement allowing existing social networks to remain is preferable to mere monetary compensation – for traditional societies in particular.

In summary, although Peruvian valuers (considered to be members of the engineering profession) have not been provided with the motives, means or opportunities to undertake the valuation of unregistered lands and research into how informal land markets operate in Peru, when called upon to do so, they have demonstrated their ability to adapt valuation methods developed elsewhere to their local context.

<sup>6</sup> Peru's Centro Peruano de Estudios Sociales [CEPES] Tierra y Derechos is looking to ensure implementation of such international agreements [Seufert and Suárez 2012]. <sup>7</sup> The 'before and after' principle holds that the affected parties will be no worse off than they were before the relevant property was taken from them, and is regarded as a minimum standard by most international lending institutions for major infrastructure purposes.

## 5.0 The challenge of valuing unregistered land: nature, solutions, and prospects

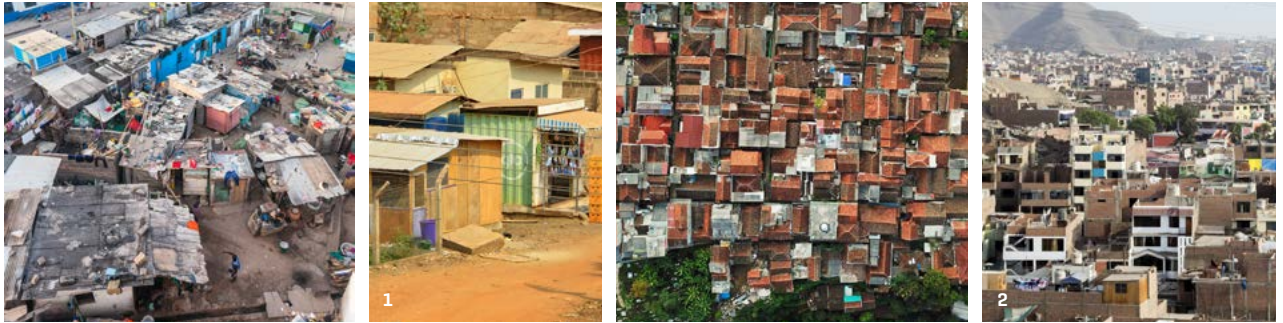


Image source: 1 - Nataly Reinch / Shutterstock.com 2 - Poolps27 / Shutterstock.com

As explained in chapter 1, this study sought to empirically investigate the economic case that title registration is a prerequisite for valuation. To address the questions, data were collected from Ghana, Indonesia, and Peru – all countries where the issue of unregistered land receives much popular, professional or policy attention.

This study has tried to address the following questions, using case studies from Ghana, Indonesia, and Peru:

- Is title registration prerequisite for valuing unregistered land?
- If so, should large scale registration programmes be scaled up?
- If not, what other approaches to valuation can be adopted?
- What are the challenges to these approaches and in what ways can the problems of these alternatives be addressed and avoided?

In these case study areas, registered valuers, officers of the land sector agencies responsible for registration and valuation, and academics who specialise in valuation were interviewed alongside architects, anthropologists, and urban planners who work with occupants of unregistered land. The resulting data were analysed using Attridge-Stirling's thematic approach.

The interviews conducted (see details in Table 2.1) indicate important strengths but also challenges of existing valuation practice. The study finds that valuers show much industry and innovation in adapting or show the potential to adapt valuation methods such as the cost, income capitalisation, and market comparison approaches to the valuation of unregistered land. In addition, the evidence indicates that local institutions, such as the courts, tend to uphold the innovations of valuers, if they are reasonable and reject valuation of registered land, if deemed unreasonable. In this sense, local valuation practices have been quite resilient.

There are also important challenges highlighted by the present and past research (e.g. Warren-Myers, 2013; Fibbens *et al.*, 2014; see literature review). Some of these can arise under any valuation regime and include:

- The cost of opportunistic behaviour that seeks to cash in on compensation programs.
- The difficulties in obtaining precise data on depreciation rates.
- Inconsistencies in the practices of national and international development agencies and variations among professional valuation bodies.

In turn, it is the challenges and peculiarities that specifically relate to the valuation of unregistered land that require urgent attention. The case studies examined in this report indicate that undervaluation is a major valuation challenge. Overestimation may happen for similar reasons, but also because some expropriated persons seek to inflate the value of their property. Where valuations are afflicted by these challenges, local institutions such as the courts of law have helped to address the problems. However, because the problems are structural – arising from top-down valuation practices – the problems recur. Overall, most of the conflicts arise from the top-down nature of the valuation process, a narrow view of 'value' as limited to only legally created structures, and an overly strong reliance on asocial valuation techniques for establishing value. Valuation is not hindered by the lack of registration and registration is not necessarily a solution for all land conflicts.

Challenges to valuation could be better addressed by determining the highest and best current use of the property or the opportunity cost of current use in a process that entails systematic investigation, including interviewing a range of willing and able market participants and other stakeholders to arrive at values that are more reasonable to stakeholders and the courts. Valuation – whether for registered or unregistered land – can be more useful as a social practice.



## 5.1 Conclusions

On the basis of these findings, three conclusions can be made:

- **First**, a push for registration is NOT likely to address the valuation challenges in the case study areas. Neither the courts nor society places much strong weight on registration. Indeed, the roots of the valuation challenge are deeper than mere registration can address.
- **Second**, the challenges to valuation could be better addressed by determining the highest and best current use of the property or the opportunity cost of current use in a process that entails systematic investigation, including interviewing a range of willing and able market participants and other stakeholders to arrive at values that are more reasonable to stakeholders and the courts.
- **Third**, valuation – whether for registered or unregistered land – can be more effectively done as a social practice. Working with communities of practice (valuers and other stakeholders) for information sharing but also for mutual learning and capacity development, working with individuals who have lost or are likely to lose unregistered land, and working with communities of people whose land is unregistered can help to better understand ‘value’ in context.

## 5.2 Recommendations

Professional bodies, national and international institutions have roles to play. This report makes the following recommendations:

### Professional bodies:

- Professional bodies can help to develop professional standards about and strive to enforce participatory valuation in relation to valuation of unregistered land.
- They can also assist in the process of capacity development in social valuation methods.

### International Development Agencies:

- International Development Agencies can help Indigenous efforts by pouring less resources into registration programs and more resources into investigating value as a social construct and in funding research on alternative notions of value.
- They can also consistently insist on ‘socially sensitive value’ arising from participatory valuation when funding development projects.

### Governments:

- Governments can support other institutions and they can also be more directly involved by building valuation capacity and developing a framework to better integrate participatory valuation within the process of compulsory acquisition/evictions.
- Similarly, recognising and supporting informality to improve both the housing and social conditions of residents of informal settlements can play a key role in reducing the tensions and contradictions arising through valuing unregistered land.



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An aerial photograph showing a dense informal settlement with numerous makeshift buildings made of corrugated metal and other materials. The buildings are packed closely together, and there is a significant amount of debris and trash scattered around. In the foreground, there is a large, dark, still body of water, possibly a pond or a reservoir, which reflects the sky. The overall scene depicts a challenging living environment.

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