

SMART SURVEYORS FOR LAND AND WATER MANAGEMENT
CHALLENGES IN A NEW REALITY



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Valuation of Unregistered Land Manual — launch
Mon 21st June 2021

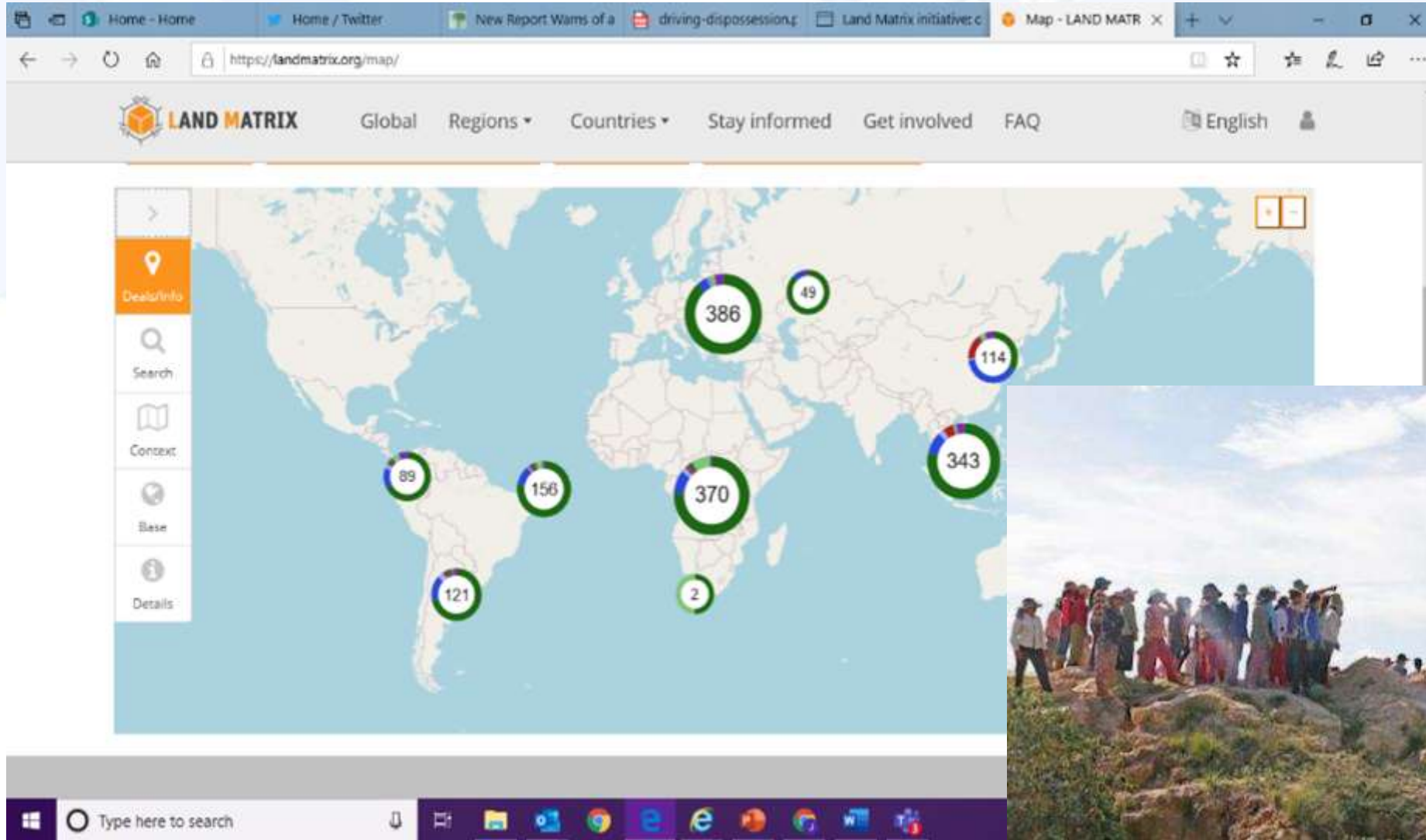
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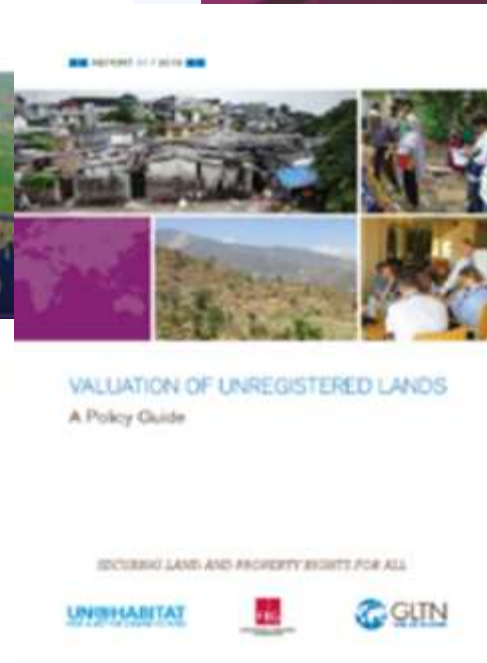
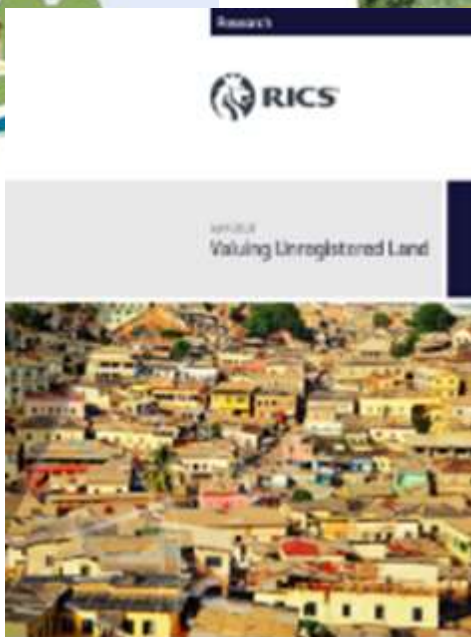
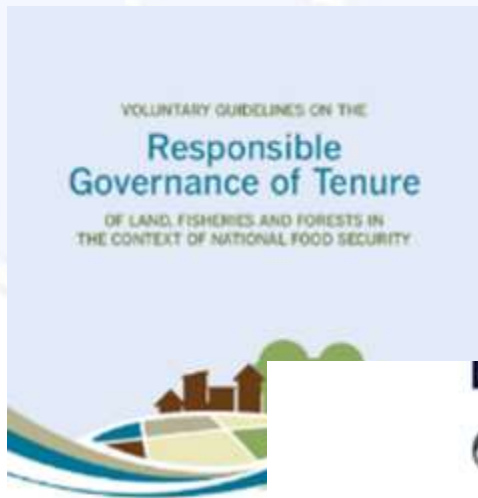
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VALUATION OF UNREGISTERED LAND - MANUAL



VALUATION OF UNREGISTERED LAND - MANUAL



Process & assurance (2020)

- **Concept agreement with UN GLTN and Professional cluster**
 - **Formation of expert working group (including expert authors)**
 - **Series of roundtables and external events**
 - **Open online consultation**
 - **Ongoing drafting and expert working group debates**
 - **Final handover and launch**
 - **Next steps**
- Dr Mike McDermott PhD
 - Prof Peter Wyatt FRICS
 - Dr. Kwabena Obeng Asiamah
 - Ben Elder FRICS
 - James Kavanagh MRICS



Introducing the Manual for the Valuation of Unregistered Land.

By

Dr Mike McDermott

and

Professor Peter Wyatt

Co-Authors.



Here is a challenge for a new reality!

Think of values as fish, swimming in a sea.

What kind of fish would market value be?



Would it be a predator, like a loan shark, or a parasite, like a rentier?

Neither. Here is how it is described in the International Valuation Standards:

Market Value is the estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion (IVS 2021).



That is, market values requires an agreement between two parties of the qualities described with the relevant motives, means and opportunities to close the deal. However, they must also reason in the manner described in the definition from their respective value sets for their agreement to be an indication of market value.

There are many value fishes like that. For example, some may say, “you scratch my back, I’ll scratch yours”, but the IVS market value rules restrict such transactions to monetary ones.



Furthermore, like some real fishes only live in seawater and others only in freshwater, market value fishes only survive when demand at a value exceeds the cost of supplying it enough to make that cost worthwhile. When supply is unlimited, such as air (mostly), markets aren't needed.

And while many values applied to land are marketable, many others are not (Shukla 2020). For example, I may identify with some land, but I cannot transfer my identity attachment to another: it's part of me.



The FAO's VGGT advises:

18.2 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.

Which means that valuers are to understand social, cultural, religious, spiritual and environmental values, and be competent to discern from amongst them those that are marketable and to what degree, and those that are not.



People may well be unwilling to sell land because it is core to their identities: but market value assumes willing parties. So they are not the people valuers base their valuations upon.

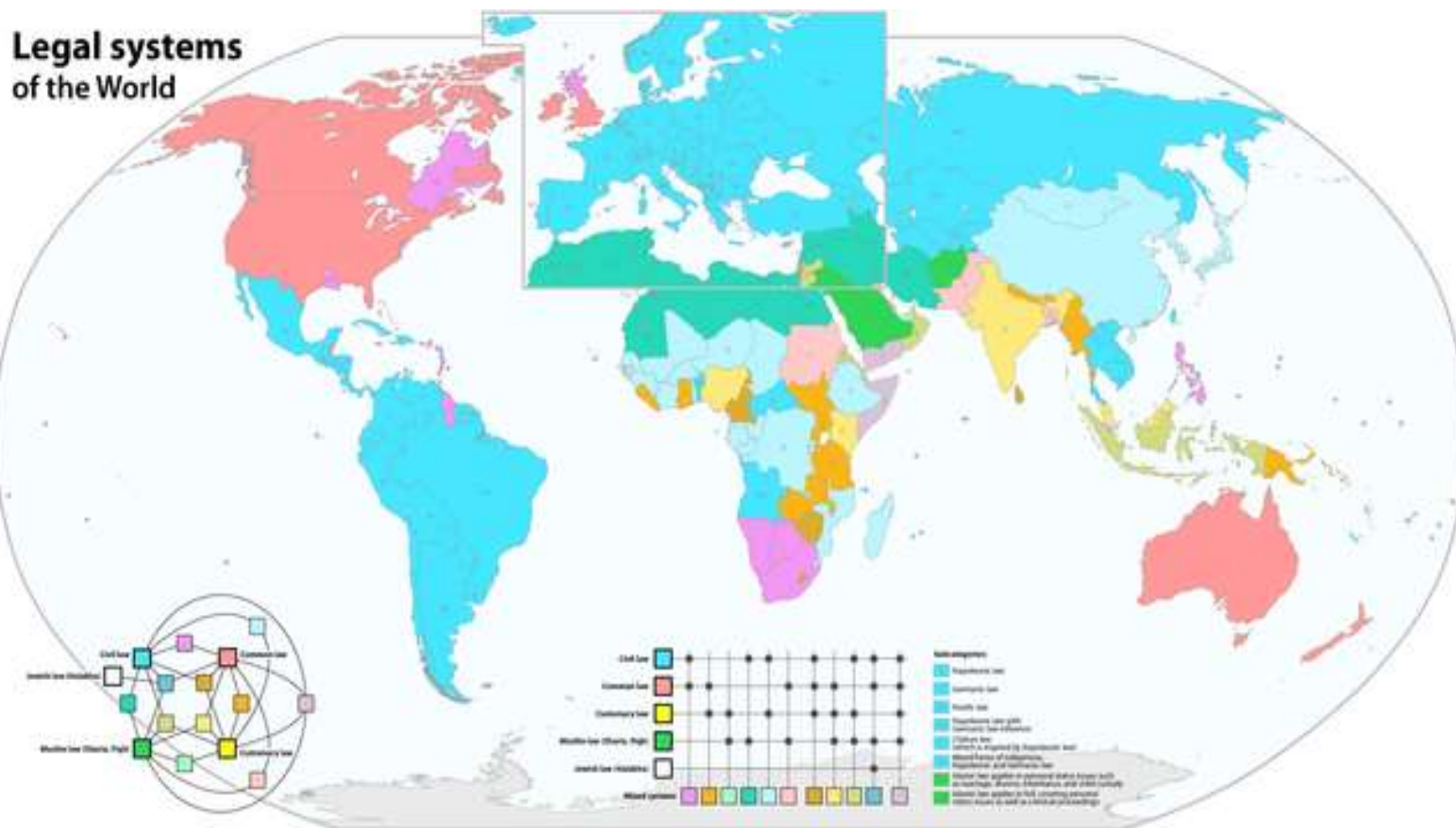


When demand becomes too strong for supply to keep up, or land is essential to identities, the choices may boil down to law or war.

There may also be conflicts between different legal systems.

Here is a map showing the predominant legal systems globally:

SMART SURVEYORS FOR LAND AND WATER MANAGEMENT CHALLENGES IN A NEW REALITY





However, there is one kind of legal system than underlies, and arguably underpins, them all, from which they all arose, and which remains widespread to this day.

Legal scholars call it “Chthonic Law”,* and it is often the law applicable to unregistered land. For example: customary law.

* Pronounced in English “K-thonic”, and “thonic” in American English, and according to the Merriam Webster Dictionary it’s from “chthōn,” which means ‘earth’ in Greek, and it is associated with things that dwell in or under the earth”.



The new reality challenges to be faced by valuers this century therefore include the suggestion that:

“states should not impose a unilateral vision of the world, but to enhance spaces – a sort of an intersection set – where different traditions can meet, dialogue and reconcile. The feature of these spaces should be ... porosity ... a comparison seeking to investigate the culture and mentality of ‘the other’ implies that a comparatist should have an interdisciplinary vocation ... This concept of interdisciplinarity, linked to critical comparative law ... [requires] their integration with new comparative approaches ...



“A methodological pluralism and an interdisciplinary approach can be excellent tools to improve the perceptive capacities of those who have to interpret the law and, more importantly, to highlight the hidden dimension of the law that a dominant culture, or other causes, have clouded ...

.



“As Sacco points out, the ‘non-written law’ is biologically and culturally related to man. That phenomenon has not disappeared, but on the contrary, it is particularly vital. In every legal system, alongside the visible norms, there are quasi-invisible or latent norms, as interpretive means, scientific concepts, general principles, values, and criptotypes* (Sacco, 2015: 149)” (Scarciglia, 2017, pp. 45-47).

* A rare term meaning “ways of functioning”.



While we valuers already “have an interdisciplinary vocation”, the valuation of unregistered lands requires both a broadening and deepening of understanding to be able to address the additional complexities involved in our intermeshed market dynamics and levels, from the market equivalents of chthonic law to those of global legal pluralism.

Internationally, many valuers in the developing world already possess varied degrees of transcultural understanding, and therefore have a head start towards addressing these challenges.



Regardless of where one is starting from, the long journey begins with a single, simple step, and then another, and so on.

In our case, the steps are mainly laid down by the International Valuation Standards Council, with other international organisations and institutions working together with the IVSC to determine best practices along the journey.



The manual describes its scope as follows:

This manual presents a practical approach for the valuation of unregistered land. It is designed to aid implementation of Valuation of Unregistered Lands: A Policy Guide, prepared by GLTN for UN-Habitat (McDermott, Myers and Augustinas, 2018), in combination with the International Valuation Standards (IVS) of the International Valuation Standards Council (IVSC).

The manual comprises two parts. The first gives an overview of recommendations related to the valuation of unregistered land rights, and the second provides more detail about what to consider when working in this complex environment. Annexes provide a template for valuing unregistered land, case studies and reference material.

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



My co-author, Professor Peter Wyatt, will now describe some major recommendations for practice.

I will then return to close the presentation with a few words about where the rubber will hit the road particularly hard: the expropriation of unregistered land.



Guidance Note – recommendations for practice

- Aim is to provide accessible, affordable, competent and unbiased valuation advice. How?
- Apply existing valuation standards in relation to valuation process and governance, as this protects both valuers and users of valuations. It also helps to engender competence, objectivity, and ethical behaviour.
- It is the valuer's job to
 - Collect and analyse available information
 - Interpret market and non-market context
 - Produce robust and defensible valuations



Guidance Note – recommendations for practice

- Unregistered land rights (in terms of ownership and occupation) pose problems
 - Inadequate legal and administrative framework
 - Paucity of information on ownership, occupation, and transactions
 - Volatile and opaque ‘markets’, state involvement, risk of corruption, coercion
- Need to determine (by evidence) the nature and extent of property rights to be valued
 - If customary, identify form and relationship with law
 - Individually or collectively owned
 - Provenance and legitimacy of rights



Guidance Note – recommendations for practice

- Effect on value of tenure uncertainty, e.g. cost of transaction delay, cost of indemnification, cost of resolving disputes
- The market value of unregistered land rights is likely to be lower than equivalent registered land rights due to: difficulty in identifying the nature and extent of the rights, their reduced transferability, and increased risk of loss, disputes and conflicting claims
- Can make assumptions where information is not available (e.g. exclusivity of occupation, ability to transfer rights) and special assumptions where the basis of value differs from reality (e.g. uncertainty over validity of rights). Client would be alerted to these.
- But the preferred solution is better information dissemination



Guidance Note – recommendations for practice

- MV is the cornerstone of current valuation practice, but the significance of non-market value is rapidly growing
- Non-transferable land rights have no market value but undoubtedly have non-market value (think of life interests)
- Valuation standards must evolve to cater for the irreducible plurality of values, including non-market values (socio-cultural, natural)
- Non-market value is a chief concern in relation to valuations for expropriation



Tried and tested market value methodologies such as these have the runs on the board for wider valuation methodologies. In sum, the methodologies are there to inform a report providing a description of the transferable asset or liability, and all the evidence consulted, and the reasoning from that evidence to an estimate of value that, at a minimum, parties to a market value transaction in the relevant market would require.

However, a market valuation alone is never the full story to achieve adequate compensation for expropriation. Other heads of compensation – disturbance, special value to owner, injurious affection, severance and solatium allowances – will or may be needed to achieve the core principle of compensation, that being the Principle of Equivalence: to leave the persons affected no worse off than they were before the expropriation.



So questions to be asked and answers include: what other values are disturbed when expropriating land? If your ancestors are buried there and have become part of the land being taken under chthonic law, how does one value that?

If your sociocultural networks as well as the economic ones they facilitate, and even your very identity, are damaged or destroyed, as they often are, what is to be done?



Regarding such questions, much can be learnt from this recent YouTube seminar organized by the South Asia Working Group and the Urban and Regional Economics Working Group of the Young Scholars Initiative, with Professors Sai Balakrishnan, author of “Shareholder Cities: Land Transformations along Urban Corridors in India” (University of Pennsylvania Press, 2019) and Ben Davy as discussant, and several young scholars:

<https://www.youtube.com/watch?v=C2y6hRYfSbE>

The topic is “the Social Cost of the Price of Land”. From 23.05, Sai Balakrishnan presents a case study of Khez Zed, the value of the land there having been influenced by the Mumbai-Pune expressway, and which serves here to provide an example of the environments in which the recommendations in this manual will be of value.



At 27:25 she mentions that “some of the most volatile land conflicts in India today are over the compensation price for land”, and at 33:30 concludes that “a persistent trend has been to strip land of its multiple meanings and to reduce it to its revenue and economic logic”.

Which brings us back to the beginning of our presentation, where we asked what sort of value fish is market value, and that it is neither a predatory nor a parasitical one. Rather, it emerges from, and dependent upon, other values and their environments, and their disappearance will make it disappear too.



Therefore, under the recommendation of VGGT 18.2, we look towards an emergent discipline of valuation, requiring a new level of valuers capable of accompanying and serving the legal profession towards its “methodological pluralism and an interdisciplinary approach” towards an integrated understanding of all value fishes and their interdependencies.



No one discipline, let alone one person, can enfold all that. So this manual sees valuers as humble foot-soldiers, going out into communities, not to strip land of its multiple meanings but to articulate them in terms of their marketable and non-marketable qualities, and fundamentally recognising from the start, as empirical research has repeatedly confirmed, that non-marketable values can be far more important than marketable ones, and far more devastating if they are destroyed.

That is, market values are there to serve other values, and the emerging discipline we can look towards to differentiate, articulate and integrate them was prophesied by Lewis Mumford* generations ago as “transvaluers”. Transvaluers may emerge from all walks of life, but valuers of unregistered land will be well placed to become transvaluers, because one has to grapple with methodological pluralisms and interdisciplinary approaches:

* 1895-1990: https://en.wikipedia.org/wiki/Lewis_Mumford



Mumford saw transvaluers as discoverers of “new forms and values that point to new destinations (Mumford 1954, p. 163). “It is not in the detached intellect alone that this transformation must be effected” (Mumford 1956, p. 185), but rather that it also required “a radical transvaluation of values” (ibid).



For Mumford, this transvaluation of values was to be radically different from Nietzsche's focus on power. It was in becoming focussed on love and care for all life, especially one's community: for "he who has thought most deeply loves what is most alive (Holderlin, "Sokrates und Alcibiades")", with "[s]ympathy and empathy, the ability to participate with imagination and love in the lives of others", (Mumford 1956, p. 129).



As one of my profession's greatest mentors, Professor James A. Graaskamp,* once said to me, (I rephrase), valuation is fundamentally a behavioural science. That is, you should understand what values drive people to market behaviours.

In an information-rich environment, even without that understanding you can still know the market and be just a mechanically-functioning market valuer and get away with it. But you can't understand any market without also understanding the values that drive it, that makes it tick.

In an information-poor market, though, such as many such in unregistered land, you need understanding: being a mere mechanist simply will not do. And you can't become a transvaluer without understanding the values that not only drive our markets, but us.

* (1933–1988: https://en.wikipedia.org/wiki/James_Graaskamp. I recall him as saying to me in one of his visits to Australia, in the foyer of the Reseve Bank in Adelaide, South Australia, that basically “valuation is a behavioural, not an empirical, science.”



Welcome to our journey.

Welcome towards meeting our challenges in a new reality.

and

THANK YOU FOR YOUR ATTENTION.



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- Ben Elder RICS, FIG Comm 9 and IVSC – the future direction of valuation practice
- Dr. Kwabena Obeng Asiama - FIG Young Surveyors network – valuation, unregistered land and the YSN Volunteer Initiative

Next steps

Questions ?