



Presented at the FIG Working Week 2023,  
28 May - 1 June 2023 in Orlando, Florida, USA

# FIG WORKING WEEK 2023

28 May - 1 June 2023 Orlando Florida USA

Protecting  
Our World,  
Conquering  
New Frontiers

## Valuation and Compulsory Acquisition of Unregistered and Customary Land: How to Ensure Fairness? (11944)

James Kavanagh

Ben Elder

**TS07C: FINDING THE PRICE OF LAND – A CASE OF  
REGISTRATION AND GOOD DATA [10609]**

Commission: 9

Wed, 31 May 11:30–13:00 Hamilton/Indian River, Hilton/Waldorf



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# Challenges and experiences of expropriation

James Kavanagh  
Ben Elder



# Content

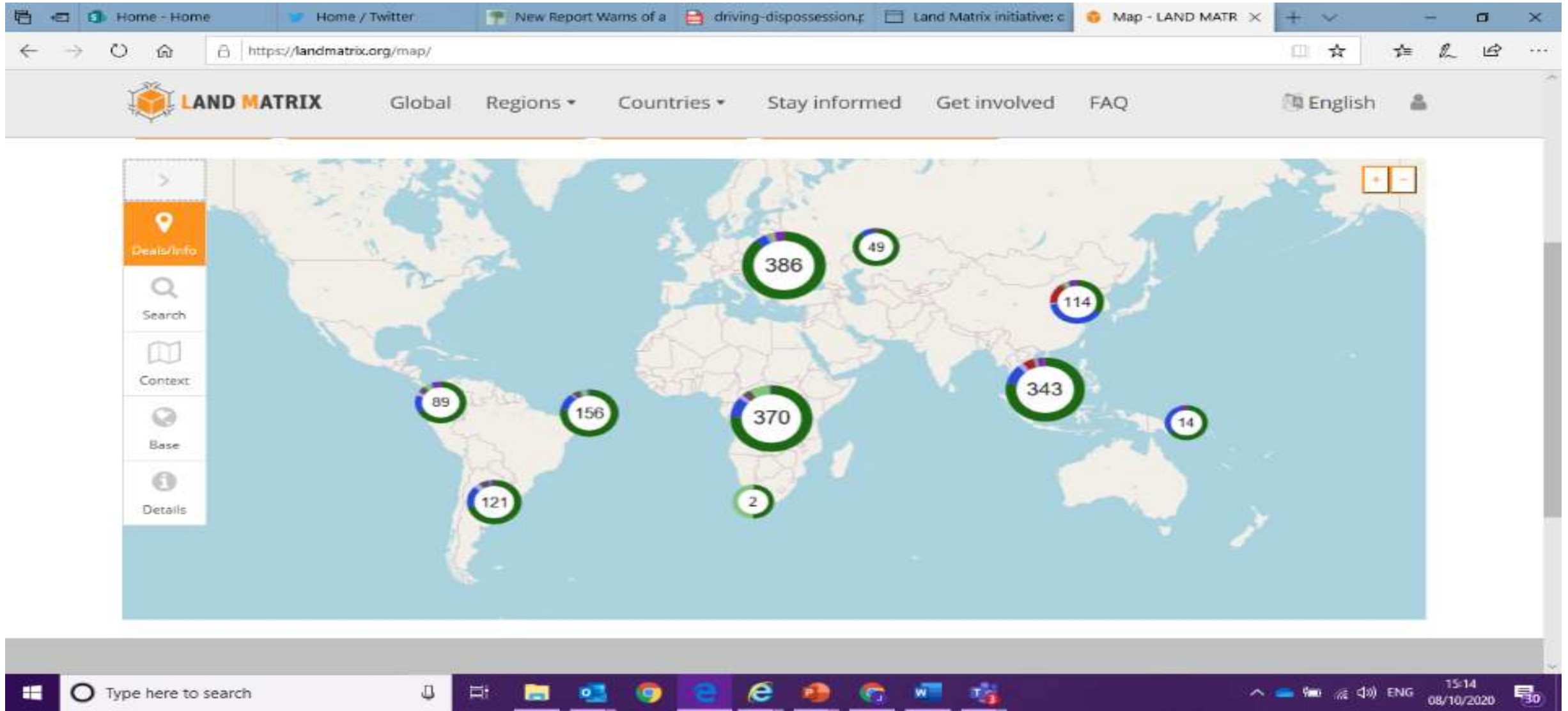
1. Introduction and context
2. Land Registration, Acquisition and Transfer: a global issue
3. Land valuation – unregistered land
4. Case studies
5. Conclusions

*‘There is no such thing as an investment without property rights that are negotiable and transferable.’ – De Soto*



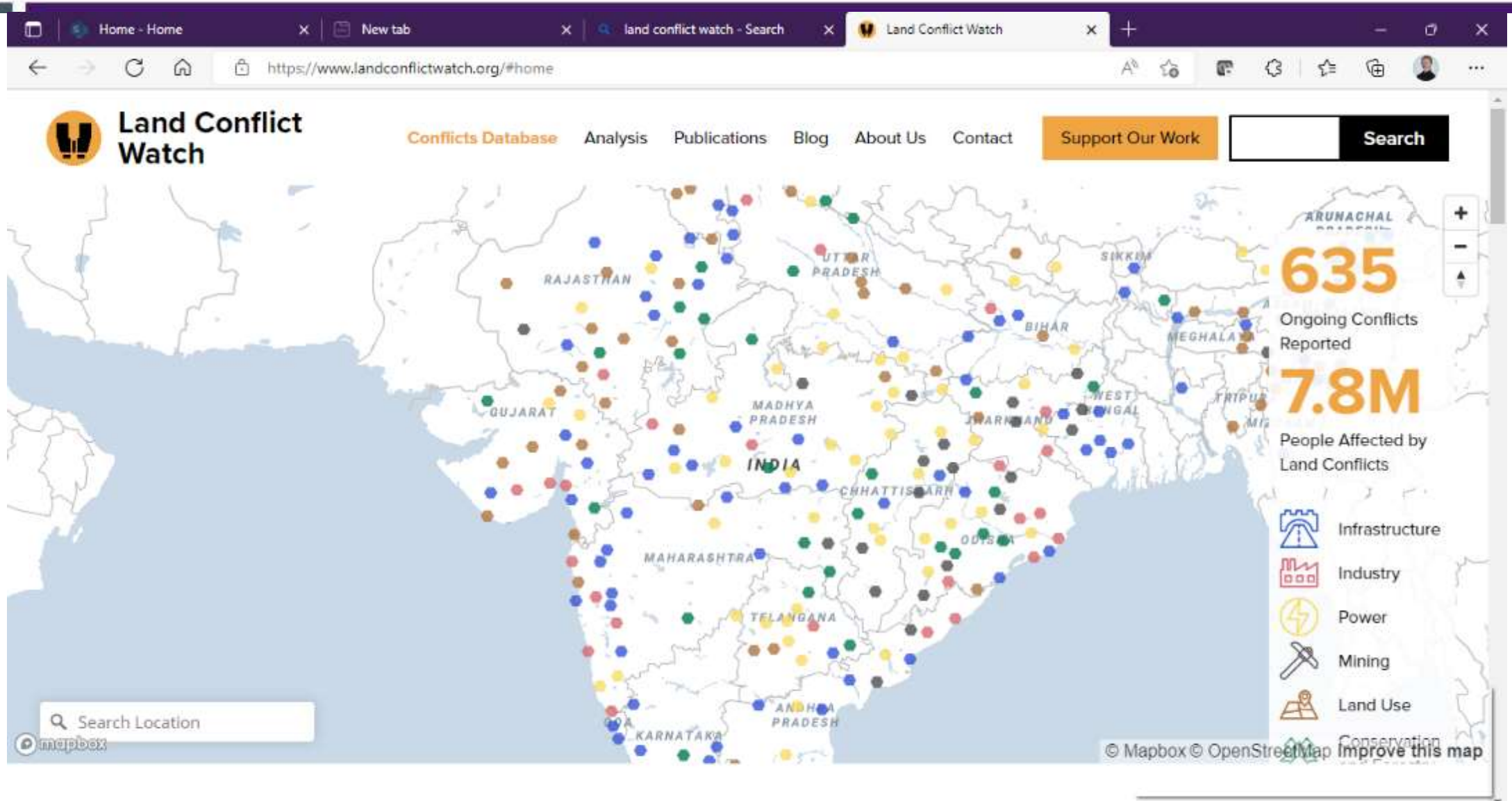
*“Land, unlike investments or employment that are time or contract bound, can support the livelihood of many people for generations. Land is also inextricably bonded to peoples’ identities and existence, thus a part of their social and cultural rights.” (ibid.)*

# Land Acquisition and compensation



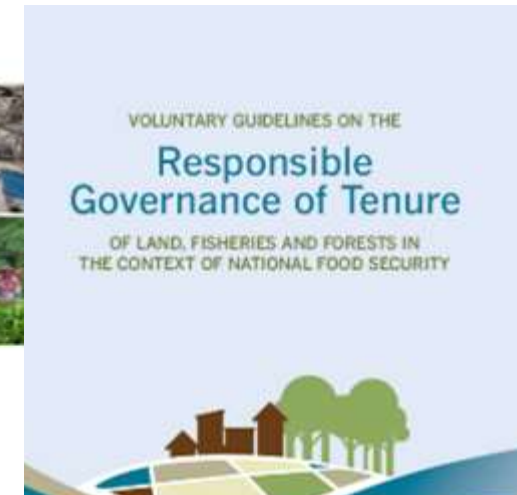


# Land conflict, acquisition and compensation



# Acquisition and compensation

- ▶ The Principle of Equivalence is recognized in many International laws that compensating for market value alone is not enough to satisfy the Principle of Equivalence. The principle of equivalence stipulates that individuals who have their property taken should not be in a worse position after the taking than they were before.
  
- ▶ Different forms of compensation for land acquisition, include:
  - Special value to the owner
  - Costs for the disturbance involved in the taking
  - Injurious affection or severance reducing the value of any land not taken
  - Allowance called “solatium”:
  - provided as a solace for intangible losses
  - not reducible to monetary terms
  - monetary compensation is the best that can be done at the time
  
- ▶ **Section 16 UN FAO VGGT**
- ▶ **World Bank Environment, Social Guidance 5**
- ▶ **Valuation of unregistered land – UN manual**



ESS5: LAND ACQUISITION,  
RESTRICTIONS ON LAND  
USE AND INVOLUNTARY  
RESETTLEMENT

# Manual for the Valuation of Unregistered Land

**“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)

A community obtains benefits from legitimate individual and communal rights over their land, including the right to fish, raise livestock, grow and harvest crops, collect wild foods, fuel wood, timber and thatching grass.

These rights allow collection of products needed for subsistence and livelihood, and often generate additional income by selling surplus to the market.

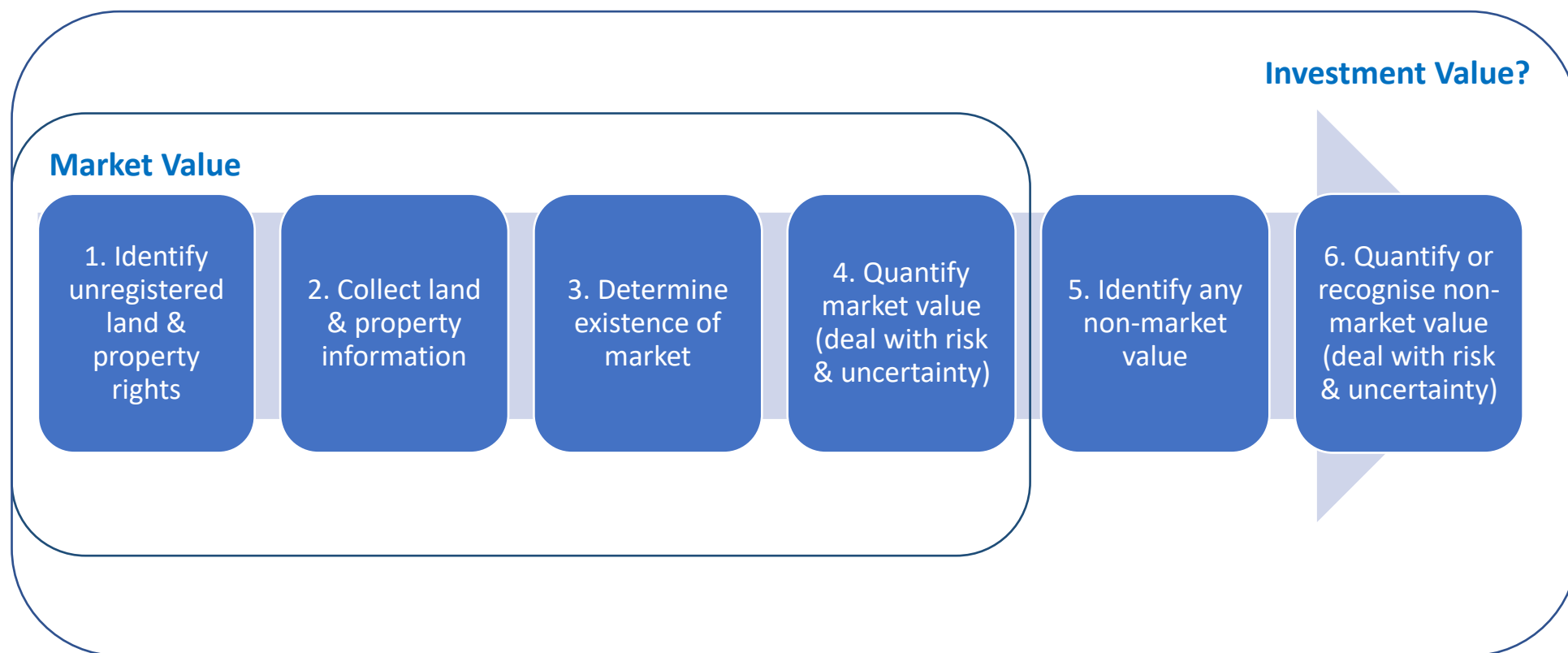
Rights that generate sales can be valued using the *comparison approach* and rights that generate income can be valued using the *income approach*.

It may also be possible to estimate the market value of some products that are consumed ‘internally’ within the community.

The value of some benefits, though, cannot be estimated using market value approaches. For example, some produce, herbs for example, may be medicinal and not traded in a market, so there is no price evidence.

# Manual for the Valuation of Unregistered Land

What issues arise when valuers seek to provide accessible, affordable, competent, objective, defensible valuations of unregistered land?



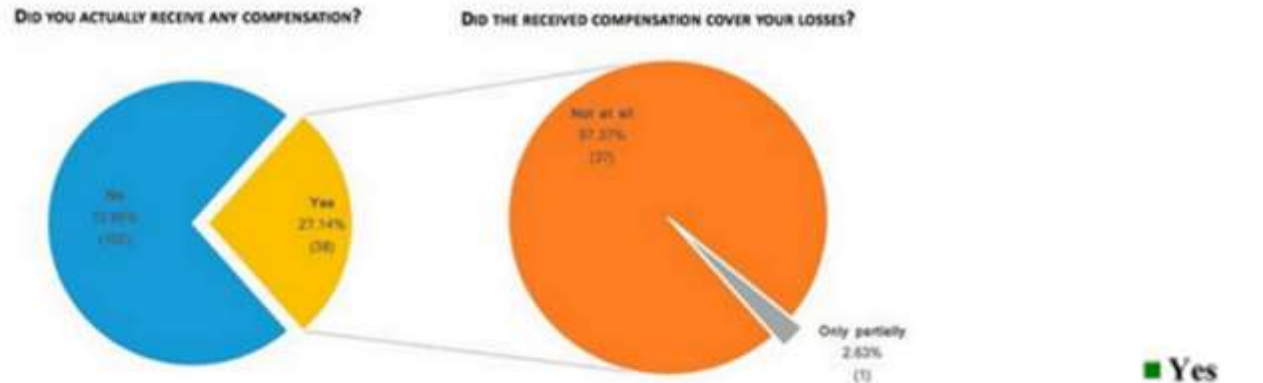
Valuation: Standards, Skills, Capacity, Information and IT...



# Current status

National-level adoption of international standards on expropriation, compensation, and resettlement: a comparative analysis of national laws enacted in 50 countries across Asia, Africa, and Latin America — the University of Groningen research portal (rug.nl)

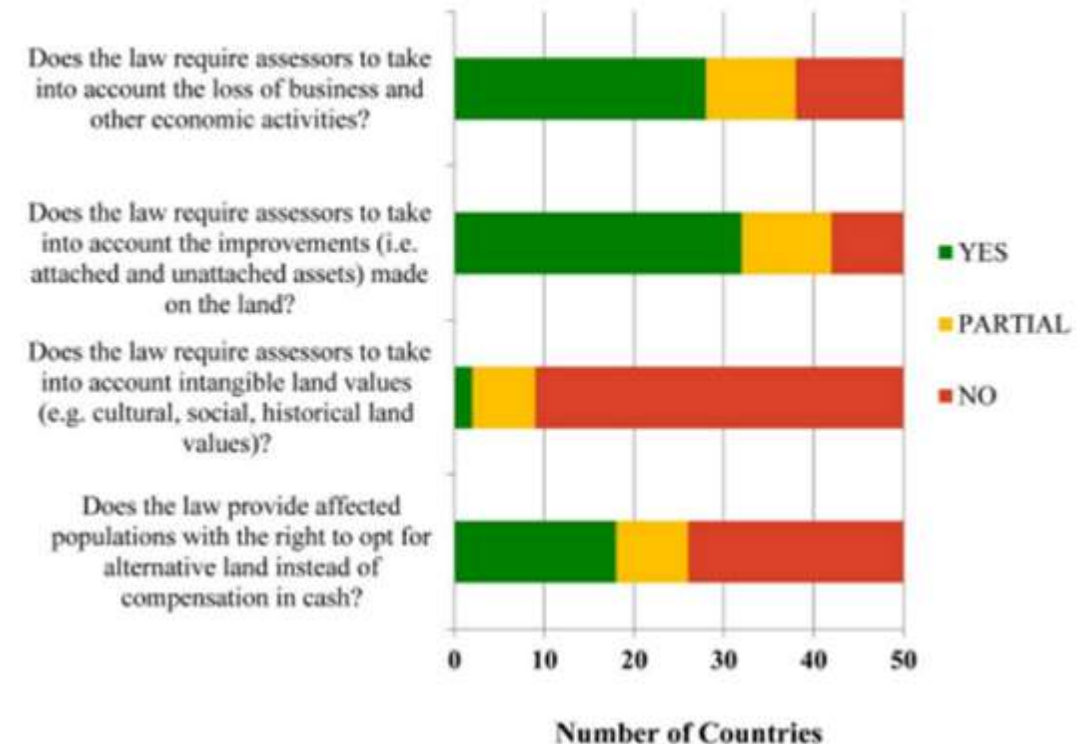
Nicholas Korte Tagliarino



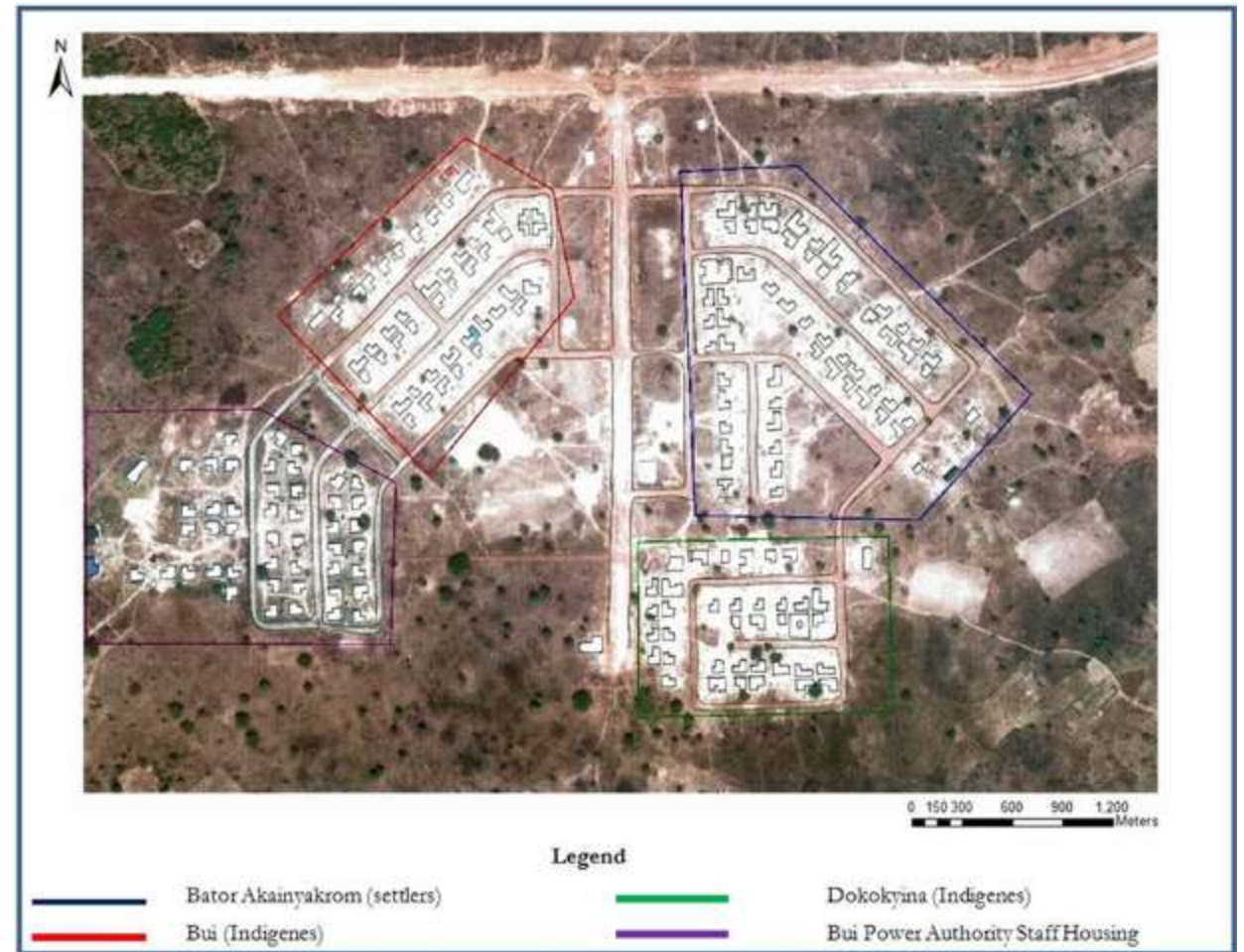
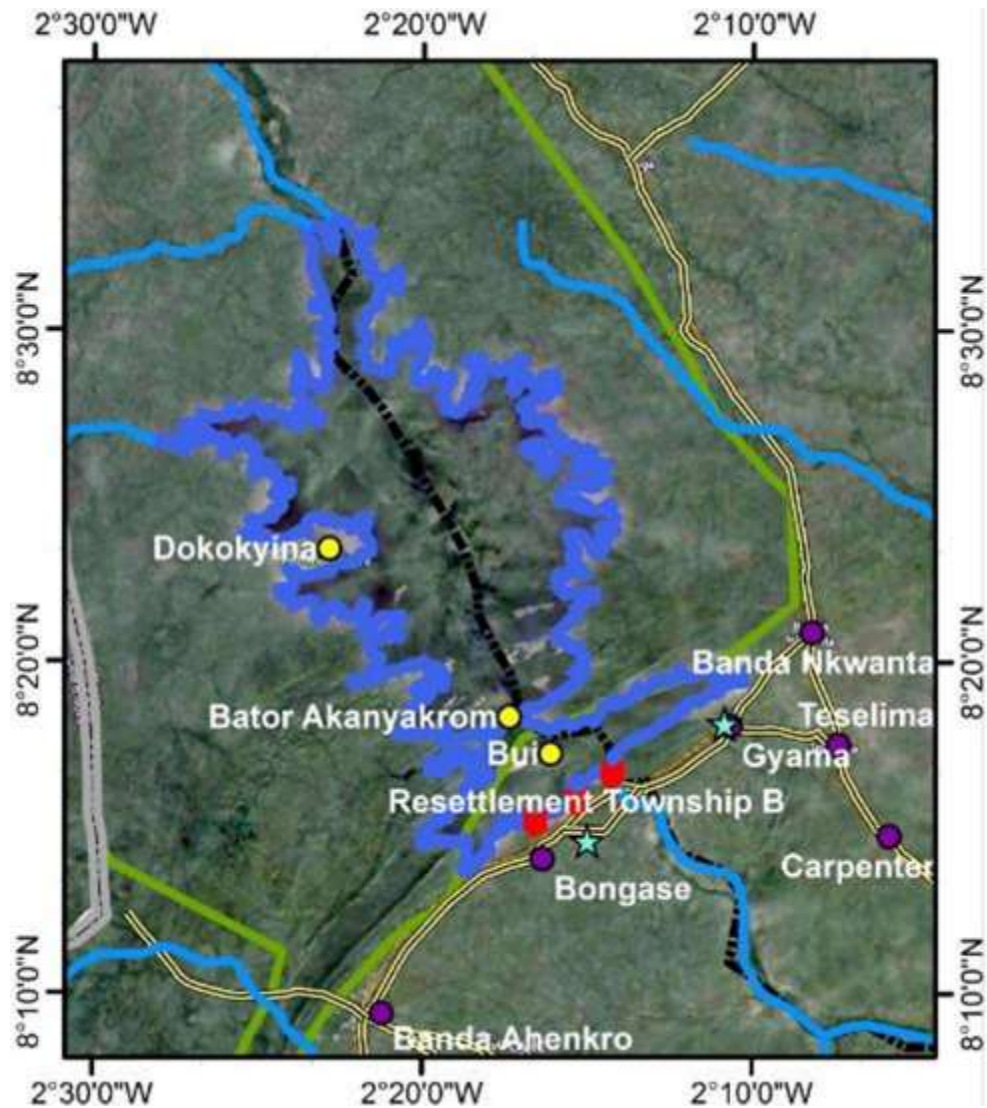
**Table 17 Promised Compensation**

QUESTION	YES		NO		DO NOT KNOW	
	N	%	N	%	N	%
Were you promised any compensation for the expropriation?	56	40.00	83	59.29	1	0.71
Were you given the opportunity to negotiate compensation? (Only if answered YES to previous question)	1	1.79	55	98.21	0	0.0
Were you told how compensation was calculated? (Only if answered YES to the first question)	4	7.14	52	92.86	0	0.0

**Figure 8 Valuation of Compensation**



# Case studies - Bui Dam Ghana - resettlement







## CASE STUDY: ASAHAN 3 - BACKGROUND

- A development project of 174 MW hydroelectric power plant located in Asahan District and Toba Samosir District, North Sumatera Province with a budget of  $\pm$  USD 349 Million
- The Asahan 3 Project is part of 35.000 MW national programs, (ground breaking: 28<sup>th</sup> January, 2011)
- The project located at forest area, PLN – State Electricity Company gets Borrowed To Use permit from the Minister of Forestry
- Subject area is 284,1 Hectares,  $\pm$  196 Hectares occupied by local community and used for residential and plantation
- Local community asks for compensation because they were living there hereditary
- The State Electricity Company cannot give compensation because the land located in the forest area (state land)

# Case studies – Uganda – public participation

- ▶ The Tirinyi– Karonkoli Road Project
- ▶ Malaba-Kampala standard gauge railway in Eastern Uganda
- ▶ Rural Electrification Project in Wakiso, Gomba, Butambala, Luweero and Mityana Districts





# Developments

## Tribal and communal rights

- ▶ Timber Creek (NT – Australia) – retrospective compensation to indigenous Australians
- ▶ Australian Property Institute – guidance on tribal title and valuation

4.2 Native Title is Property Native title is a form of property which has a real and substantive use and economic value. Although native title cannot be bought and sold in a traditional sense, agreements can be made between native title holders and others who wish to use or access native title land and these agreements will include commercial terms. Questions about how to value native title are still being worked through by experts and the Courts. For the purpose of this GP it is important to understand that it is a real form of property interest with a value and an impact and is not just a social or political concept.

4.7 Native Title as a Form of Property - Summary Native title is a real and substantive form of property which is legally protected and has utility and value for the native title holders, which needs to be considered in relation to projects and proposals that may require new grants of tenure. UNQUOTE. Source: <https://www.api.org.au/wp-content/uploads/2022/12/APGP-402-Native-Title-Matters-eff.-1-July-2023.pdf>

- ▶ Ecosystem and biodiversity rich tribal lands under pressure (20% of globe)

# Conclusions & next steps

- ▶ Unregistered (communal and individual) land is important and needs to be recorded appropriately
- ▶ Be holistic in land reporting, communal land rights and non-market value
- ▶ National legislation and its evolution are essential
  
- ▶ People value land for spiritual, social, and economic reasons. Therefore, not all land rights relate to the economic institution of property. Many express other values. Attachments, however formed, remain even after people are forcibly removed and survive in later generations. Dispossession breeds disputation
- ▶ Next steps – unregistered land and valuation MOOC 2022, expansion of ILMS ‘sustainability’ component, existing UN GLTN online training [Geospatial technology and participatory methods for securing tenure rights \(ifad.org\)](https://www.ifad.org/en/learning-and-knowledge/online-training/geospatial-technology-and-participatory-methods-for-securing-tenure-rights)
  
- ▶ Key resources
- ▶ [Creating a system to record tenure rights and first registration \(fao.org\)](https://www.fao.org/land-tenure/creating-a-system-to-record-tenure-rights-and-first-registration/)
- ▶ [Voluntary Guidelines on Tenure | Governance of Tenure | Food and Agriculture Organization of the United Nations \(fao.org\)](https://www.fao.org/land-tenure/voluntary-guidelines-on-tenure-governance-of-tenure/)
- ▶ [International Land Measurement Standard – International standards for a global land industry \(ilmsc.org\)](https://www.ilmsc.org/)
- ▶ [Valuation of Unregistered Land–A Practice Manual – Global Land Tool Network \(gltn.net\)](https://www.gltn.net/)
- ▶ [Real estate registration and cadastre insight \(rics.org\)](https://www.rics.org/real-estate/real-estate-registration-and-cadastral-insight/)



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