

# LVC WEBINAR 6 REPORT:

## How Legal Interpretation Hinders or Helps Land Value Capture: Case-studies from Africa and Beyond

By  
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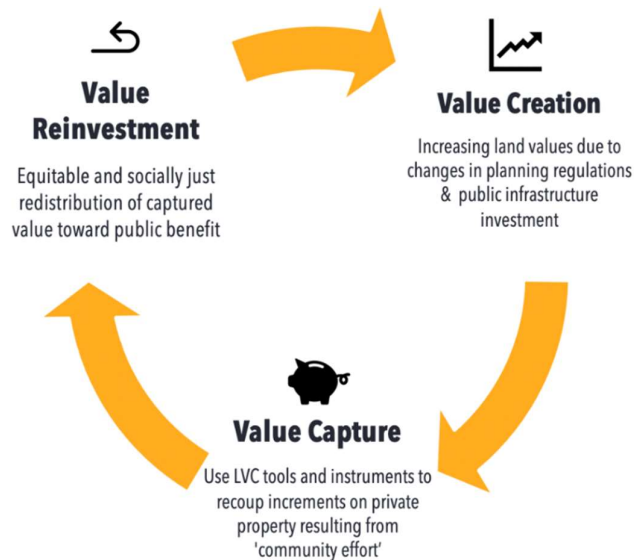


# 1. INTRODUCTION

The sixth webinar in the Land Value Capture (LVC) Webinar Series hosted by the National Land Value Capture Programme was held on 29 June 2023. The webinar title was “How Legal Interpretation Hinders or Helps Land Value Capture: Case-Studies from Africa and Beyond” and revolved around a presentation delivered by urban economist, Astrid R.N. Haas.

The National Land Value Capture Programme (<https://landvaluecapture.org.za/>) is a partnership between DAG, the Lincoln Institute of Land Policy, and National Treasury’s Cities Support Programme. The aim of the programme is to strengthen the capability of South African Metro Governments to efficiently implement land value capture tools and strategies, towards more inclusive urban development. The objective of LVC is to create a virtuous value cycle where land value appreciation due to public or community investment/effort is at least partially captured for reinvestment in the public interest.

This, the 6th webinar, focussed on the inter metro scale, expanding the usual South African focus to lessons from cities and countries in Africa and the Middle East, specifically Jordan, Egypt, and Uganda. This Land Value Capture webinar series especially planned for officials from South African metros. The primary objective of the webinar series is to improve knowledge and understanding of the different contexts under which the Land Value Capture concept is applicable in South Africa. As officials from all eight metros across South Africa are invited, the space also offers a unique opportunity for community building and peer-to-peer learning.



## **2. PRESENTATION: HOW LEGAL INTERPRETATION HELPS / HINDERS LVC: THE CASE OF JORDAN, EGYPT, AND UGANDA**

The excellent presentation delivered by Astrid R.N. Haas shared her experience working on LVC in three contexts, being Jordan (specifically the Greater Amman Municipality) Egypt and Uganda. The presentation focussed on the link between the law and LVC implementation, and while some clear linkages exist, the legal frameworks are not the be all and end all. In fact, one finding was that in each case, the implementation seen was generally not as intended by the local legal framework.

In Jordan, specifically in the Greater Amman Municipality, there are two formal land value capture laws in place being the 1966 Planning law and the 1987 expropriation law. These contain two specific mechanisms, a development levy and a betterment levy. Even though these are clearly laid out, including who must pay and how payments are calculated, their effectiveness is limited. This is due to several factors, including that calculations are often legally challenged and upheld by the courts.

While the two legally codified approaches in Jordan had little impact, a third and much more effective practice emerged. The compensation fee approach arose from a reverse interpretation of the law which states that property owners should be compensated if the state reduces their land use rights. The interpretation means the state asks for compensation when land use rights are increased. This approach unofficially but practically replaces development and betterment levies, facing fewer court challenges due to its simple calculations and transparent transactions when rights are awarded. Along with property tax, the compensation fee helps the Greater Amman Municipality generate about 60% of the revenue required for its budget.

In Egypt, even more comprehensive land value capture instruments are embedded in the law, some of which date as far back as the Ottoman empire. These include betterment charges, developer exactions and a land value tax increment. There is also a New Cities Authority which has its own dedicated set of LVC laws.

Despite the existence and long history of these laws, the LVC systems generate almost no revenue, due to several challenges. The first is the very centralised nature of government in Egypt. Eighty five percent of all local level infrastructure investments are carried out by central government, and only one percent of revenue collected by local governments is retained. This diminishes the link between LVC and reinvestment at local levels. Second, as only an estimated four percent of land parcels in Egypt fall into formal cadastre, land values and ownership are difficult to determine. Lastly building permits are extremely complex, and much development

happens informally. With the combination of these factors, there has been little incentive for local authorities to implement LVC.

There is now a push to find new sources of revenue in the law, and a resurgent interest in LVC. The New Urban Authorities which are permitted to retain revenue from LVC are making headway. The Damietta Governorate and the Giza Governorate are starting to explore land readjustment and a betterment levy respectively.

Uganda stands out among the case studies not only in that it has no LVC laws, but that it has laws explicitly prohibiting land tax or land-related tax. This is until Uganda becomes a middle-income country. While the colonial Town and Country Planning Act contained provisions for land tax and LVC mechanisms, they were repealed when legal reformation took place.

In addition, there are other challenges facing the concept of LVC in Uganda. There is no official landowner register, cadastre, or official indication of which of the five tenure systems in place govern each piece of land. Not only does land belong to the people, but if government wants to do anything on land, they must compensate landowners. This means that when government does initiate projects, many people lay claim to compensation which can get bogged down in court.

Practically however, bottom up approaches to LVC are emerging. In some cases, local communities who are not satisfied with the quality of roads and infrastructure are (in consultation with local authorities) self-organising and voluntarily giving up parcels of land for infrastructure projects. This seems to be a pure form of land restructuring as LVC, where the relationship between public and private value creation is clear and agreed upon.

The case studies of Jordan, Egypt, and Uganda demonstrate three very different approaches to Land Value Capture. In each case, the implementation of LVC is not working as written in the law. Egypt has LVC enshrined in law but it is not effectively implemented. Jordan has clear legal approaches to LVC, but the practical implementation is happening outside of these prescripts. In Uganda, even though LVC has actively been excluded from the law, it is happening in some ad-hoc community led cases.

The law can help outline what is possible, but it can also paralyse implementation. For LVC to work effectively, the law needs to make sense with respect to:

- a) the community's understanding and perceived benefits of LVC,
- b) the administrative capacity for calculation and implementation, and
- c) local contexts.

### **3. DISCUSSION: OPPORTUNITIES AND CHALLENGES FOR SOUTH AFRICAN METROS**

Three responses to the presentation were received, one from Willard Matiashe from the Development Action Group and one each from Prof David Amborski and Enrique Silva from the Lincoln Institute of Land Policy. Responses to inputs were also received from the presenter, and some inputs were received from the floor. This section does not attribute any comments to individuals, but rather summarises the discussion.

In South Africa, there are some similarities and some differences to the case studies presented. Before 1994, specific instruments were designed for value capture in new township establishments, such as the Financial Relations Act of 1976 and the Cape Province Township Ordinance of 1934 in Cape Town. The Financial Relations Act stipulated that if a new township was established, the municipality was entitled to the increment in land value. The Ordinance stipulated that municipalities were entitled to 50% of the value increment. Both laws were repealed after 1994. These two sets of legislation served as the basis for developer endowment, a precursor to developer contributions.

The observations made in the presentation highlight the immense value of engaging professionals from different fields in discussions about Land Value Capture. This resonates with work done in South Africa and at the Lincoln Institute. It's important to understand that there is no one linear path towards LVC. Different starting points can exist, and creativity and risk-taking at various levels of government are crucial. In situations where informal approaches to LVC emerge, it's important to monitor, learn from and promote the practices that work.

It's crucial that government doesn't abuse and overuse LVC. Value created by public investment should be recovered by the public and LVC should not become a general revenue generation tool. It should also clearly be linked to reinvestment projects. LVC must be fair and beneficial to the public. If it becomes unfair, it can quickly lose legitimacy. When it makes sense to the public, it will likely gain more traction.

In the South African case, one argument came through that legal instruments for LVC have been weakened over time, essentially having been reduced to development contributions for bulk infrastructure, rather than have links to increases in land value. This was countered by another view which argued the legal instruments are in place in South Africa, we just need to be active and creative in implementing them. There is a risk that we hide behind the law as a reason not to implement LVC.

## **4. OUTCOMES AND RECOMMENDATIONS FOR THE WEBINAR**

Broadly, the main outcomes and recommendations of the webinar were that:

- While an enabling legislative and policy environment is important for LVC, having one does not guarantee effective implementation, and implementation can happen in novel ways outside of formal norms and standards.
- LVC laws and policies are only as good as the outcomes they produce.
- Local context is vitally important regarding both the limitations and opportunities for LVC. Approaches to LVC must be allowed to evolve and grow within the specific contexts of the countries and cities they are being implemented in.
- Linked to the above, experimentation in implementing LVC must be allowed to establish practices that are effective and acceptable to parties involved.
- Generally, the legislative framework in South Africa can be used to successfully implement LVC, but changes must happen where necessary.
- We must document LVC processes (formal and informal) to allow for learning and progress.