Systematic Property Registration:
Risks and Remedies

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Introduction

This paper looks at a variety of technical issues, challenges and problems that arise during systematic first registration programs, their causes and what can be done to deal with them. Its aim is to provide practical advice to those who are designing or engaged in first registration programs that use the systematic adjudication approach and also those who supervise such programs so that the issues covered in this paper can be eliminated or their negative impact reduced. The paper draws primarily from the land registration experience in the Europe and Central Asia region and uses examples from that region, but as relevant, examples from elsewhere are included.

The discussion of issues in first registration has been informed by the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, or VGGT, which was adopted by the Committee on Food Security in May 2012.¹ The following pages seek to expand on several of the provisions in that document, particularly general principle number 1, which provides that:

States should recognize and respect all legitimate tenure right holders and their rights. They should take reasonable measures to identify, record and respect legitimate tenure right holders and their rights, whether formally recorded or not ...

And general principle number 3, which provides that:

States should promote and facilitate the enjoyment of legitimate tenure rights. They should take active measures to promote and facilitate the full realization of tenure rights or the making of transactions with the rights, such as ensuring that services are accessible to all.

The ten principles of implementation, which cover such matters as equity and justice, gender equality, consultation and participation, transparency and continuous improvements are also highly relevant to the following discussion. In terms of the specific guidance included in the VGGT, Part 5 of the Administration of Tenure (particularly section 17 on recording of tenure rights) is very relevant, as are Part 3 on the legal recognition and allocation of tenure rights and duties, and the various provisions covering policy and legal frameworks and delivery of services that appear in Part 2 of the VGGT.

This paper is divided into four parts: 1) Design, 2) Implementation, 3) Owners and 4) Legal Issues. There are 16 topics, and each is discussed under the following headings:

- What is this issue about?
- Why does this issue matter for first registration?

• What are the causes of this issue?
• What can be done to deal with this issue?

Except to the extent that they impact on systematic registration programs, this paper does not consider other types of land programs, such as land allocation, consolidation, redistribution and legalization of informal rights over land and buildings. These are very important but separate topics, and they deserve to be addressed in their own right. This is, perhaps, somewhat of an artificial distinction for many involved in first registration because land allocation or legalization activities can be rolled into a program, so what people see is a seamless process of being granted land and having that land recorded by the government. However, given space limitation, this paper focuses on only the rather technical issues that are specific to first registration programs.

Nor does this paper deal with matters of general relevance to programs, such as:

• political will and leadership, without which no amount of resources, technical assistance or dedication of staff can make a program succeed;
• clear, workable institutional arrangements, without which time and money will be wasted while competing institutions fight or fail to cooperate;\(^2\)
• thorough supervision and quality control, which is essential to any large-scale enterprise;
• allocation of adequate resources, without which program timetables will slip, existing resources will sit idle, and outcomes will be substandard;
• project management and scheduling of activities, which are fundamental to a smooth and efficient roll out of a program;
• monitoring and evaluation, which is essential to the efficiency and improved allocation of resources for programs that run over several years; and
• reporting, which aids not only good management but also the transparency and public acceptance of a program.

This is not to say that these matters are not relevant, but rather to put a limit on the topics covered by this paper, otherwise it would run to several hundred pages. However, they should be kept in mind while reading the following pages because they form the backdrop to the technical matters being discussed.

Thus, this paper focuses on technical issues that are specific to programs for first registration of existing rights by means of systematic adjudication, which will be referred to as “systematic registration”.

It is assumed that the reader has a basic understanding of the steps and overall process of systematic registration, which involves the investigation and determination of boundaries,

rights and ownership on a mass scale in selected geographic areas. In summary, the main stages of the process are as follows:

- Design and preparation: identifying areas to be covered, drafting of laws/regulations to support the program, preparing staff instructions, forms and publicity strategy and materials, recruiting and training of staff, and collecting relevant maps and documents.

- Communications and engagement: creating public awareness of the upcoming activity through meetings, advertising, word of mouth, etc. so that the community is prepared when the adjudication teams arrive. Communications and engagement activities continue through all the subsequent phases.

- Fieldwork and legal investigation: meeting with owners, measuring boundaries, collecting documents from owners, assessing documents, preparing reports on findings, and making initial decisions on boundaries, ownership and rights.

- Public display of results and objections: publishing results of fieldwork and the legal investigation for the entire community, supported by staff who can explain the results to the community and who can take down objections, which are investigated and incorporated in the results.

- Final determination and declaration of an area as complete: based on finalized records of boundaries and ownership, making final determinations on each parcel’s boundaries and ownership rights, and issuing of a declaration that the records are now legally valid. In some countries, a certificate of ownership is provided to the owner of each property. An appeals process is also available to deal with objections against the final results.

Two key words that are used throughout this paper need to be defined at the outset. These are:

- Land, which refers to land, real estate and immovable property, including buildings and other permanent constructions; and
- Owner, which covers not only those formally recorded in documents as owners, but also other right holders (such as lessees and mortgagees, people holding rights under inheritance or matrimonial laws) and occupiers. Where necessary, the distinction between documented owners and occupiers whose rights are based on long-term possession will appear in the text.
Part 1   Design

1. Lack of documents that establish rights

What is this issue about?

This issue concerns the problem of a lack of documents to establish a person’s ownership of land and the related issue of the evidence that is commonly required in systematic registration programs to conclude that a person without complete legal documents can be registered as the owner. Commonly, a sizeable number of people encountered during systematic registration programs do not have all the necessary documents, do not have documents in the proper form, or do not have any documents at all, which present significant problems for those programs that are predicated on documentary proof of ownership.

Why does this issue matter for first registration?

Registering all the land and its owners is a basic aim of systematic registration, which seeks to systematically record each and every parcel and right holder in a selected area. Unless this is achieved, intended beneficiaries will miss out, the cost per parcel registered will increase, and there will be wasted resources. Further, the value of the data produced during the program will be less useful if gaps in coverage exist. A failure to register all the owners can also undermine community confidence and engagement in the program if the community sees that only some are benefitting. From the viewpoint of individual owners who cannot be registered, recording everyone is important because they might even be made worse off by the program if it reveals that they should not be occupying the land and are, as a result, displaced and suffer losses to their livelihood and wellbeing. Such actions can also threaten political support for the program.

What are the causes of this issue?

There are a variety of reasons for people to lack a full set of legal documents, such as:

- the documents existed but they have been lost, destroyed or otherwise cannot be found by the current owner;
- some documents exist but they are incomplete or informal. For example, a sale document, divorce certificate or inheritance certificate might be missing, a sale might have been conducted informally by means of a handshake, or a document was prepared but was not notarized or the transfer tax was not paid;
- the documents have not been issued because the occupant failed to take up an offer for privatization of the property (particularly in Eastern Europe or countries of the former Soviet Union);
• the documents never existed because the person’s rights are based on long-term possession.\(^3\)

Various other cases can be imagined. However, they mostly fall into two main categories:

• ownership through documentary means where the documents are missing or incomplete;
• ownership by long-term possession where no formal documents establishing ownership ever existed.

What can be done to deal with this issue?

It can be a surprise to officials who are commencing a systematic registration program that many people do not have a complete set of documents. So, as a first step, those designing the program need to understand the potential for this problem and undertake to deal with it. Examples from other country’s programs and study tours can assist in raising awareness of both the problems and possible solutions, but it might be necessary to wait until the officials have first-hand experience in their own country for them to believe that there is a problem at all and to understand that they need to do something about it.

Once it is decided to do something about this issue, the legal framework needs to be investigated and assessed to see how far the existing legislation can be used to deal with the problems of incomplete documents and long-term possession. Where existing laws can be used, clear instructions to staff need to be prepared to explain how the laws should be applied in each case (see section 10). Where the existing laws do not fully cover the situation, then appropriate amendments to support the types of solutions discussed below need to be adopted.

For incomplete documents, possible responses are to:

• Regularize documents using professional services funded under the registration program that resolve any anomalies with the documents, so that they can be regarded as “legal”. This, however, can be a costly process if private sector notaries or lawyers have to be recruited. Therefore, a more cost effective method approach might be required, such as using registry officials or others who are specially authorized to do the work. Alternatively, the program could fund the fees of professional services of notaries and lawyers, and then recover the money (and possibly interest) from the owner when the property is subsequently sold, with a lien being recorded over the property in the interim.

• Introduce a blanket provision in the law that formalizes informal documents so that documents which were not executed strictly in accordance with the law could be

\(^3\) It is also possible that a third party, such as a co-owner or lender, has possession of the documents. This case illustrates the need to reach out to all right holders. See section 11 on capturing all right holders.
regarded as acceptable for the purposes of systematic registration. Similarly, the law could state that certified or registered copies of documents could be accepted as if they were originals.

- Waive or provide an amnesty for unpaid taxes (or at least defer payment of taxes), as discussed in regard to outstanding back taxes (see section 2).

- Accept incomplete sets of documents or copies together with confirmation of the facts from the owner and others who have knowledge, such as neighbors and community leaders (either by oral evidence or in statutory declaration form). Other forms of evidence, such as utility bills and tax receipts could also serve as evidence. If it were considered that this approach would not be fully reliable, the ownership could be recorded as conditional, and then the record could be subsequently formalized after an appropriate waiting period had expired, such as is the case for “provisional” or “limited” titles that are used in many countries (see following paragraphs).

- Engage with other agencies to issue the necessary documents to establish a person’s ownership, such as the privatization agency or land management agency.

An important means to overcome many of the problems with a lack of documents that establish rights is recognition of long-term occupation as ownership. There generally needs to be a law covering this situation, and it should state that occupation for longer than the period specified in the law (sometimes known as the “limitation period”) gives rise to ownership rights. Where no such law exists, one should be enacted. On that basis, as long as there is appropriate evidence of the occupation, the long-term occupier could be recorded as the legal owner.4 This approach can also be used where the owner once had documents, but they are missing and cannot be re-constituted. This approach can be applied to cover long-term encroachments and occupation of part of a neighbor’s land, so as to address boundary disagreements.

Recognition of long-term occupation as the basis of ownership has been used in first registration programs in many countries, particularly common law countries. It can even be used when the period of occupation is falls short of the limitation period or the evidence is doubtful. In such cases, a notice is included in the title records stating that the ownership is provisional or limited in some way, so that no one is misled into believing that the person has occupied the property for the full limitation period or has fully proven the ownership. However, once the person’s occupation exceeds the limitation period, he or she could apply to have the notice removed, and in this way, the provisional or limited title would “mature” or be upgraded into a full or ordinary title. Where the occupier applies to have the title upgraded, it is important for him or her to declare that there are no challenges to the occupation.

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4 The period of occupation varies from country to country and is to be found in either the civil code or property legislation. In some places it is 20 years, while in others, it is as low as five or six years.
An alternative approach where a person does not have possession for the full limitation period is to register that person’s occupation right over the land but to not show the person as an owner. For example, the section of the title record where the owner’s name is recorded might be left blank, but the name of the occupier, the fact of his or her occupation and the date on which it commenced could be recorded as a note elsewhere in the title record. Here, too, once the full statutory period had passed, the occupier could apply to be recorded as the owner and the title upgraded.

The note on the title is not only useful for the registry staff but to anyone investigating the ownership of the property. The note gives warning that extra care should be taken when dealing with the property.

To address the issue of long-term possession of state land, there should be consideration at the design stage of a program for formalization of such occupation. It could run in parallel with the first registration program, as discussed in the issue on state land (see section 12).

Checklist

✓ Recognize that a sizeable number of owners will not have a complete set of documents that are all in order, and that there will also be a sizeable number of people occupying land without documents.

✓ Review the legal framework to see how well the existing laws can deal with such situations, and develop solutions and legislation where necessary to deal with the problems.

✓ Consider solutions such as regularizing documents as part of the systematic registration process, introducing a blanket formalization of all documents, waiving past unpaid taxes, accepting copies and cooperating with other agencies to issue missing documents.

✓ To deal with long-term occupation, recognize people who have occupied land for longer than the statutory limitation period as full owners.

✓ To deal with occupation that is shorter than the statutory limitation period, record occupiers and details of their occupation but include a notice or warning on the title.

✓ Allow occupiers to apply to be full owners without any warning on the title after their occupation has passed the statutory limitation period.
Box: Basic Design of First Registration Program

When first considering a registration program, the question arises whether it would be better to invest significant resources and time in a systematic registration program to fully identify and record the rights and right holders (to the extent that it is possible), or whether a faster and cheaper approach that captures most rights and right holders is better?

The answer to this question is influenced by the fact that no matter how much time and money goes into a thorough investigation, some rights and right holders will be missed, and there needs to be a mechanism for dealing with outstanding rights and right holders, as briefly discussed immediately above.

Many other factors will need to be considered to answer this question. These include:

- What other options exist and would they be adequate to the country’s needs? A conversion program can be effective, or a conversion-investigation hybrid could also work. What existing record (if any) are available for conversion and how accurate are they? If there are few records or if they are very old, then the existing records might not be suitable as the basis for conversion.
- What funds and other resources are available? If funds are very limited, then a full systematic registration program might be beyond what the country can afford, particularly if the plan is to cover the entire country or large parts of it. Does the country have enough trained specialists to carry out the fieldwork and is there time to train new ones?
- What are the policy and political forces at play? What has the government committed to doing?
- When does the work need to be completed? Systematic registration can be slower than a simple conversion program due to the time involved in preparation, communications and engagement, fieldwork and investigation, and public display and objections. A conversion program can be completed relatively quickly in comparison.
- What complicating factors might be involved, such as the percentage of informal or irregular tenure in the country or the extent of squatting, both of which need to be regularized through a parallel process that would probably involve fieldwork. There could be various other complicating factors that would need to be resolved by parallel (or subsequent) processes while the systematic registration program is underway.

At the design phase, each country needs to consider these questions, bearing in mind the time, money and other resources that are available, and the objectives set for the registration authority by the government. For example, in several countries of the Western Balkans, the decision was taken to adopt a streamlined approach that permitted the first registration process for the entire country to be completed in a relatively short space of time. This was possible because there was already an extensive set of records of properties and ownership that they could use as the basis for the new records. Serbia and the former Yugoslav Republic of Macedonia, for example, used several measures that permitted a relatively rapid and cheap completion of the program, and now have in place systems to correct the errors and omissions. In Croatia and the former Yugoslav Republic of Macedonia, surveys were conducted only in a limited number of cases, with the old (relatively reliable) maps
being accepted as adequate. Another example comes from some common law countries, including Australia and New Zealand, which had extensive conversion programs in which the existing deeds were simply incorporated in the title registration system as “qualified” or “limited” titles, and after a legally mandated period, they were upgraded to ordinary titles.

The process of investigating and determining the appropriate design for a country is not a simple matter, and examples from other countries and study tours could be very informative. Although the task of designing first registration programs is often left to surveyors and lawyers, it would be useful to include economists in the process whose input on the costs and benefits of the various options would permit the government to make a more informed decision. A good economic analysis would also substantiate the decision when it is ultimately made, and thus provide a justification for the program if it were ever to be criticized by politicians, civil society or others.

2. Taxes

What is this issue about?

This issue concerns the prior taxes that have not been paid and the existence of which are revealed during the process of first registration, whether they are inheritance taxes, transfer taxes, annual land taxes, regularization payments or any other form of duty or due. Once identified, these past taxes must sometimes be paid before the property can be registered, creating significant barriers and even disincentives for owners to participate in the systematic registration program.

Why does this issue matter for first registration?

The issue of unpaid back taxes on properties that are undergoing first registration – particularly by the means of systematic adjudication – is highly relevant to the success of the program because taxes can act as a barrier to the public’s participation in a process that is based on mass participation. If people learn that they have to pay some or all of the back taxes, their interest in participating (even if the longer term benefits of registration are well explained and understood) can greatly diminish, particularly where they have no means of paying such back taxes. Nor is it a minor problem that affects only a few properties. In one Eastern European country, for example, it was estimated that 50 per cent of landholders in an area where systematic registration was undertaken were liable for back taxes in some way, and the obligation to pay those taxes stopped many from participating.

Further, people are often suspicious that first registration programs are a means for the government to gather information on properties for taxation purposes, so if they are obliged to pay taxes before the property is even registered, their suspicions are likely to be confirmed. Consequently, their responses can range from passive resistance (not opening the front door, etc.) to active opposition against the registration program in the local or national media. Any opposition will have a detrimental effect on the program and its
results, and therefore its efficiency, because systematic registration is a process that is built on community participation, as noted above.

Additionally, the lower the number of people who engage in the program, the lower the number of properties registered, with the resulting increase in the cost per parcel, waste of resources and reduction in the value of the data produced.

What are the causes of this issue?

The primary cause of the problem of back taxes is the failure to apply or enforce the tax laws at the time when the taxes became due. It is not so much that the individual taxes were inappropriate or excessively burdensome, but rather that a backlog of unpaid taxes has been created for many individuals because the system of levying such taxes and ensuring their payment did not operate effectively. Consequently, instead of being paid when they fall due, the taxes are permitted to build up. It is only when a first registration program reaches a location that the problem is revealed.

What can be done to deal with this issue?

The simplest solution, but perhaps the most difficult to negotiate with the ministry responsible for revenue, would be to dispense with or waive all back taxes. The waiver could be presented as a one-off act, which would be a contribution to the registration program. It could also be presented as a necessary cost to ensure the success of the program’s investment, which would soon be recovered due to the more accurate and more complete information on land ownership that would be available for all ministries, agencies and the public to use. It could be stressed that the prime beneficiaries of the improved ownership information would be the agencies responsible for taxes, thus ensuring that the tax laws would be better administered in the future.

A variation on this approach would be to dispense with all back taxes except the last one by which the current owner acquired the property (usually either by transfer or inheritance). This approach would mean that the current owner would only be liable for the tax that he or she should have paid. In this way, all taxes that should have been paid by previous owners would be waived, but not all revenue would be lost. It would also avoid claims that the government was creating a “moral hazard” and that those who ignored their obligations to pay taxes were now being rewarded, while those who complied with the tax laws get nothing.

It would also be possible to defer payment until the owner is in a position to pay – either all the back taxes or, preferably, just the tax that he or she should have paid. Under this approach, the tax obligations would be recorded on the property’s title as an encumbrance (a type of lien) and the property could not be traded or mortgaged until the outstanding tax was paid. When the property was next sold or mortgaged, the owner would have access to the funds and could then more easily pay the tax. Once the back tax had been paid, the recording of the encumbrance would be removed by administrative means. The question
of interest on the outstanding amount would also have to be negotiated with the ministry responsible for revenue, but it could be kept at zero or the long-term government bond rate.

A further approach would be for the authority that will receive the proceeds of an annual property tax, such as the municipality, to pay the back taxes. The amount paid would be recouped through increased collection of property taxes based on the newly created set of accurate property records. Such an approach would need to be negotiated on a case by case basis with each municipality and would require a well researched and presented economic argument.

A similar approach could be adopted in relation to other amounts that an owner would be obliged to pay, such as a notary or court fee to resolve inheritance (see section 1). The systematic registration program or municipality could cover the cost, and recover it when the property was next sold or mortgaged.

Any change to tax laws would be a challenge to negotiate with the ministry responsible for revenue, such as a ministry of finance. It would be important therefore to have well justified economic arguments as to why waiving back taxes or deferring them should be introduced – for both sporadically incurred taxes (such as inheritance and transfer) and regularly incurred taxes (such as annual land tax). An economic justification should be prepared and it should estimate both the loss to income and the benefits from waiving taxes to permit more properties to be registered. It should compare revenue from all sources using the current situation and an estimate of the situation if properties were registered. The justification should also look at wider benefits to society and the economy, such as improved access to low cost credit that results from registration of properties, and it could model all of the approaches discussed here.

Checklist

✓ Negotiate the waiver of all back taxes with the ministry responsible for revenue, or all back taxes except the last one.

✓ Defer payment of back taxes until the owner has funds to pay them, and place a lien on the property to protect the state’s claim to taxes.

✓ Have the taxes paid by another body that would recoup the loss through improved land tax collection.

✓ Prepare a thorough justification for any proposals that considers the full range of social and economic benefits resulting from property registration.
3. Appropriate dispute resolution mechanisms

What is this issue about?

This issue concerns the mechanisms for dealing with objections and appeals against the results of systematic registration. Specifically, it concerns the often inadequate, inaccessible or excessively complex approaches to dealing with such objections and appeals, as well as the practical implications for finalizing systematic registration when appeals are still under consideration.

The following covers both objections presented during the public display phase of the process and appeals against final determinations. It does not concern other types of complaints concerning the process, such as complaints about the conduct of the systematic registration teams, which would be addressed through a grievance redress mechanism or in an administrative court, nor does it concern fundamental challenges to the nature of the process, which would be addressed in the country’s constitutional court (see section 15). The subject of the objection or appeal itself is therefore limited to decisions of the adjudication officials, but these could concern any of the matters being investigated and determined in the systematic registration process, such as ownership and shares, boundaries and area, and subsidiary rights (easements/servitudes, leases, mortgages, etc.). Dealing with the objections and appeals will be referred to as “dispute resolution” or “DR” here.

Why does this issue matter for first registration?

The possibility of objecting or appealing is a key aspect of the systematic registration process because both measures provide a means to ensure that people can protect their rights and that the community can have confidence in the process and its results. The mechanism for objecting is a type of quality control and a safeguard because it allows owners and third parties who know the situation to have input to the results of fieldwork at the public display stage. It is therefore a basic element of the overall systematic registration process. The ability to appeal is an essential element in any decision making process, which includes the systematic registration process. A failure to adequately deal with DR will, therefore, remove basic safeguards and protections from the process.

It also matters how the mechanisms function, otherwise they will not effectively do their job. So the methods for objecting or appealing need to be accessible to everyone. Efficiency and cost effectiveness of DR mechanisms are also important aspects, so as to keep the program’s costs down, and the mechanisms need to be effectively integrated in the overall process in a way that does not hold up progress of other cases while individual cases are being appealed.

What are the causes of this issue?

A failure to have appropriate, practical and effective DR mechanisms as part of the systematic registration process arises from a number of factors. Lack of recognition of the importance of DR is a common cause. Often, the resolution of disputes is regarded as an
afterthought, once the more important work of surveying and adjudication is addressed, and without any understanding of the practical implications that a flood of appeals could have on the program. Further, a lack of awareness of the importance of DR, its role in the systematic registration process, and how it can adversely impact the process if not adequately addressed means that this aspect of systematic registration is sometimes poorly designed, resourced and implemented.

Other reasons for failing to provide suitable DR mechanisms can be a limited understanding of best practice and an excessively legalistic approach to resolving objections or appeals. There can also be a lack of understanding of the barriers faced by the public in appealing (time, money, complexity) and a cultural bias against letting people object against decisions of officials. Further, laws and regulations on systematic registration can fail to clearly specify the DR process, leaving it to the existing court system to resolve, which might not be well suited to the capacity of land owners to use it, the program’s implementation schedule or the technical issues involved in a systematic registration program.

What can be done to deal with this issue?

Properly addressing DR during systematic registration should be recognized for what it is: an important part of the process that brings transparency and builds confidence, and that provides quality control and safeguards. It should not be regarded as an afterthought but rather as an integral part of the process. Senior management needs to understand why and how DR plays a fundamental role in the process, so explanations, illustrations from elsewhere (including examples of poor practice and its consequences) and study tours are needed.

Thought needs to be put into DR mechanisms at the planning and preparation stage, well before fieldwork commences. The existing legal framework and system needs to be reviewed and considered to assess whether the existing laws and DR mechanisms would be suitable for the systematic registration program. Where an existing law or DR mechanism can be applied to the specific needs of systematic registration, then that law or system is a good starting point that might need only minor adjustments. However, where the existing laws and DR mechanisms are not suitable, then specific approaches to resolving the disputes that arise during systematic registration must be developed.

Where a law is to be drafted to deal with DR, it should clearly specify the procedures, deadlines and rights and obligations of all involved. Details of the procedures should be comprehensively specified in regulations or instructions, with discretion being kept to a minimum.

In designing DR mechanisms, some basic elements would include:

- Barriers to making an objection or lodging an appeal should be minimized so that DR mechanisms are easily accessible to owners and others claiming rights. There should be no charge for objections at the public display stage; forms or procedures
should be simple; staff should facilitate the lodging of objections, such as by filling in the claim form for the person involved; and the process should be non-legalistic and culturally appropriate.

- There should be clear deadlines for making objections and lodging appeals, as well as for completing administrative reviews. Reviews of objections should be completed promptly so that there are no delays in the making of final determinations.

- Those reviewing decisions should have wide powers to investigate as well as powers to mediate between the parties, rather than being constrained to narrow legalistic issues.

- Objections and appeals should be considered by more senior officials than those who made the original decision.

- All decisions should be recorded in writing and presented to the people objecting or appealing, and the results should be made public.

There should be a tiered approach, with at least two levels to the DR mechanism. Initially, there should be a simple, easily accessible, culturally appropriate and relatively fast administrative review that can address the bulk of objections arising from the public display. This stage can be regarded as a quality control element of the program. Anyone should be able to lodge an objection within a specified, limited time, and there should be no fee. Cases should be reviewed by the original decision-maker’s supervisor or manager. The results of this process can be incorporated in the final determination.

After the final determination has been issued, anyone aggrieved should be able to appeal. Commonly, this would be conducted in a more formal judicial setting, such as through a specially constituted commission or land court, or even through the existing court system.

An appeal should not hold up progress in finalizing the systematic registration program. Rather, appeals should be referred out of the process, investigated and determined, and then the results incorporated once the appeal is resolved. All non-appealed cases should progress to completion without delay while the appeals are being considered. In Montenegro, for example, the registration process takes a very long time to complete because one appeal can delay the finalization of hundreds of cases in the local area, causing unnecessary delays and costs as well as postponing the benefits of registration to those people whose land is not subject to an appeal.

Training based on the law and instructions should be developed and provided to staff, and information on objection and appeal options should be published. Information should be clear and widely available so that people know that they can challenge the results, how they can do it, and how much time they have to lodge their appeal or objection. The materials should make it clear that the DR mechanisms are integral parts of the process and
that systems are in place to facilitate people lodging an objection or making an appeal, together with clear instructions on how to do so and contact details.

As part of its wider quality control function, the results of objections and appeals would inform future systematic registration decision making, so key results should be incorporated in the practical guidelines and publicized among fieldwork staff to guide them in their work (see section 10).

It might also be necessary to develop a grievance redress mechanism to deal with matters outside the focus of decisions made by the adjudication officials, such as failing to give adequate notice, provide materials, deal with the public politely, etc. Here, too, the basic principles discussed above would apply.

Checklist

✓ Understand the need for and integral role of DR in systematic registration.

✓ Design the DR mechanisms at the planning stage.

✓ Review the existing legal framework and use existing DR mechanisms where they work well and would be suitable for dealing with objections and appeals.

✓ Clearly specify basic procedures, deadlines, rights and obligations in the law, and then provide details in the regulations or instructions, and minimize officials’ discretion.

✓ Ensure that the DR mechanisms are accessible to all, that those reviewing have adequate powers (including powers to mediate), and record all outcomes in writing, which are provided to those objecting or appealing.

✓ Adopt a two tier approach to deal quickly with objections so that a final determination can be reached, and then deal with appeals through a more formal judicial or quasi-judicial process.

✓ Provide training to staff in dealing with objections.

✓ Prepare and widely publish information on DR mechanisms.

✓ Incorporate results of key decisions in practical guidelines and inform field staff.

✓ Consider introducing a grievance redress mechanism to deal with procedural matters.
4. Informal buildings

What is this issue about?

This issue concerns the problems arising during first registration programs when it is revealed that owners of the land being registered do not have permits for the buildings, or parts of buildings, constructed on the land. Consequently, the building or even the land itself might not be registered. This issue is largely restricted to those countries where buildings are recorded in the land registration system.\(^5\)

The issue of informal buildings constructed on state land adds the further element of squatting and the need to regularize rights, either before or while the informal buildings issue is being resolved and (ideally) prior to registration of the property. See section 12 on state land.\(^6\)

Why does this issue matter for first registration?

The consequences of this problem for first registration are various. A failure to register all properties and their buildings means that resources used to identify the problem, but not the solution, are wasted, raising the cost per parcel and reducing the number of properties registered (thereby undermining one of the main advantages of systematic registration); landholders do not receive documents for their properties (and they thus miss out on the various benefits of registration); and the community could lose faith in the program if sizeable numbers of buildings were not registered, and thus support for the program could be lost. Multiple gaps in the property records also reduce the value of the maps and other records for land management and other purposes, such as planning, disaster management, etc. At worst, identifying informal buildings through first registration could result in authorities ordering the demolition of the buildings, causing the occupiers distress and suffering (even if other accommodation were found) and loss of livelihood, and which could also threaten political support for the program.

What are the causes of this issue?

There are numerous causes of the “illegal buildings” problem,\(^7\) which is endemic in many countries. These include a failure of government to provide an effective permitting scheme

\(^5\) For example, the owner might not have the appropriate construction or occupation permit, or the building is not constructed in accordance with the permit. This problem can be compounded where the land does not have the necessary urban planning zoning for construction, which often occurs in fast growing cities that spread out into adjacent agricultural land.

\(^6\) Squatting on private land can be addressed either as discussed in section 1 above, using long-term possession provisions of the law, or through a state-sponsored processes of expropriation of such land followed by its allocation to the squatters. This has occurred, for example, in Albania as part of a program to regularize ownership of land areas through a specially created agency. The program was based on advice received from Hernan de Soto.

\(^7\) The “illegal buildings” problem is not a single problem, but rather a multitude of different problems relating to the status of buildings and even the land on which they are built. Each situation can require a different response.
or to provide one that is workable for the public, out of date urban planning, poorly drafted legislation, high permit fees, ineffective housing programs and overwhelming influxes of people (due to conflict, economic migration or natural disaster). In an environment where the rule of law is not operating effectively, people can simply ignore construction obligations and planning restrictions, particularly if they know that there will be a round of legalization later on that provides approvals more easily and cheaply than under the construction and planning laws. Also, in some cases, documents are lost during war or conflict, or society itself changes to become more formalistic, and new rules are applied to old buildings. A further cause can be that previous legalization programs were not implemented properly or were too expensive, so people failed to regularize their buildings when they could have done so. This is not an exhaustive list, but it gives a flavor of the causes, which are varied and sometimes overlapping.

What can be done to deal with this issue?

Resolving the informal buildings problem is beyond the scope of a first registration program, so it is important to engage with those who can address it. If a national strategy and legalization legislation, plus new urban plans and a legalization program, are required before buildings can be registered, then it might be better to focus on the issues of planning and legalization before even beginning systematic registration, or if registration must go ahead, then to combine the two programs in a staged approach. If so, then the following options could be considered.

Prior to embarking on a first registration program, it would be useful to assess the extent to which the problem exists, where it exists, and the nature of the problem across the country. Social factors should also be considered. In many countries, there is already extensive research on this topic, so a desk review could be sufficient to inform strategic planning and identify who could be partners in resolving the problem. A review and assessment of the legal framework should be included in this work.

Within the current legal framework, a registration program could reach agreement with local authorities to cooperate in regularizing buildings in coordination with the first registration activities. This would require support and engagement with those authorities, particularly the political leadership, which would be required to introduce streamlined, quick, low cost methodologies to investigate and issue approval documents for buildings. There might be, for example, an amnesty in which no fees are charged, particularly if the mayor recognizes that any income lost in the short-term could be recouped from increased annual land taxes. An official of the municipality could be made a member of each registration team, and deal with matters on the spot. For example, in the first Kyrgyz Republic land registration project, in all the urban centers (except Bishkek), the teams worked with the mayors to issue documents for buildings that had been constructed without papers (as no such papers were required during the Soviet Union era). If an assessment of the legal framework showed that new or amending legislation were required, it would also be necessary to work with the national government to enact such legislation. These issues would need to be resolved before systematic registration fieldwork commenced.
A more radical solution, which would certainly require legislation, would be to provide an amnesty for informal buildings – perhaps all or perhaps certain categories. In Bosnia Herzegovina, for example, legislation was prepared to deem all buildings constructed before a certain date to be legal, even if the papers had been lost, on the basis that they could be assumed to have complied with the standards and legislation of the time at which they were constructed.

If no agreement could be reached with the local or national authorities, an alternative approach would be to identify each informal building and register the property, but to record a note that no construction permission papers were presented or that the status of the building is not known. In this way, as occurred in Serbia and a number of other countries, a record for the property and its ownership is created and the owner is better placed to go about legalization when it becomes feasible. Although not ideal, this approach ensures that the registration program’s resources are not wasted and a more complete set of property data emerges at the end of the program. It also provides a framework for a legalization program in the future. It should be made clear in the legislation permitting this approach that the property can be traded without the need to formalize the building.

Checklist

✓ Conduct a desk review into the situation of informal buildings before deciding on starting a systematic registration program in a particular area.

✓ Engage with those who are responsible for construction permitting and urban planning, and work with them to develop responses to resolve the problems with informal buildings.

✓ Develop and adopt legislation to implement workable solutions.

✓ Create teams from local municipalities to work in parallel with the systematic registration teams to resolve problems with informal building either before or at the same time as registering the property.

✓ Consider legislation that would legalize all buildings, or certain categories of buildings, without the need to apply for legalization.

✓ Where buildings cannot be legalized, record the existence of the building when registering the property, but note that its status is unknown. Permit trading of such properties without the need to legalize the buildings first.
5. Elite capture

What is this issue about?

This issue concerns the unequal allocation of the benefits of first registration programs to those with more valuable property assets, usually located in cities or major towns, and the corresponding reduced distribution of benefits to those with lower value assets, usually in rural or forest areas, but also in informal settlements. The issue applies to first registration programs no matter whether they adopt the systematic approach or another approach, such as sporadic registration or conversion.

Why does this issue matter for first registration?

Without a fair distribution of the benefits of first registration across society, a systematic registration program would fail to comply with the principle of providing equal benefits to the whole of (landholding) society. It would also fail to contribute to reducing poverty and lifting the economic wellbeing of the poorer segments of society.

A failure to address elite capture could also undermine public support for the program if the bulk of the population, and possibly vocal interest groups, sees that the program is benefiting only the wealthy. This, in turn, could lead to the rapid loss of support from politicians and threaten the entire program. Reputational risk for donors involved in funding such programs, too, can be a consequence of elite capture.

What are the causes of this issue?

Systematic registration programs commonly focus on valuable areas because these are often the most economically productive, have relatively high turn over, can make best use of lower-cost credit possibilities, and will quickly have a positive impact on the economy. The return on investment is therefore greatest in such areas.

Some level of elite capture is bound to occur because the elite have, by definition, more valuable assets than the poor, particularly the landless poor. Therefore it is not possible to address this problem in absolute terms because the rich will always get a greater benefit (in dollar terms) even if the benefits are spread equally (in percentage terms). However, as will be discussed below, this inherent problem should not be exacerbated by conducting first registration only in areas where the wealthy dominate.

Elite capture can also arise because those in charge of the program focus only on economic factors when selecting areas to conduct first registration and ignore the social side. In terms of overall wellbeing and social stability, the poorer segments of society are likely to benefit more from registration, in relative terms, than the wealthy.

This leads on to the next possible cause, which is a lack of understanding or recognition of the economic impact of registration on the poor, particularly how registration can have a
small impact in dollar terms but large impact in terms of impact on farmers and poor people through both recognition of ownership and consequential access to lower-cost credit.

What can be done to deal with this issue?

At the outset, in the design phase, the program documentation should explicitly include the delivery of benefits across the entire range of (landholding) society as an objective, and there should be a clear statement that identifies the poor as specific beneficiaries. Similarly, in the communications and engagement activities and also in discussions with officials and other stakeholders, it should be stressed that the program is designed to benefit the entire community.

Those designing the program need to consult with local communities and NGOs to capture the full picture outside the major urban centers. This will identify the types of communities that could be included in the program and how it could benefit them.

In the economic assessment, the benefits to the poor, including greater access to short-term credit for agricultural or other income generating inputs should be specifically considered. For example, one farmer in the Kyrgyz Republic whose home was registered reported how he used it as collateral for seasonal loans for seed and fertilizer, and reported that without these inputs, the land would sit unused. In the social assessment, there should be consideration of the different segments of (landholding) society.

In the selection of areas for the program, a mix of areas with a range of economic and social conditions (as identified through the assessments) should be included throughout the program’s schedule, ranging from cities and large towns through to small towns and rural areas. The program should be progressively rolled out in all areas so that work in each type of area across the entire country (or selected area) is concluded at approximately the same time.

As discussed in section 12, to deal with the issue of informal settlements on state land, the program would need to coordinate systematic registration with a program to formalize ownership.

Checklist

- Explicitly include fair and equal distribution of the benefits of the program to all segments of society as an aim of the program, and identify the poor as particular beneficiaries, and communicate this fact.
- Work with local communities and NGOs to understand the full picture.
- Assess the impact of first registration on the poor, including economic and social impacts.
✓ Implement the first registration program in a range of areas across the country that covers both the wealthy and poor, rural and urban.

6. Subsequent registration system

What is this issue about?

This issue concerns the existence, accessibility and use of a system for registering transactions with land after it has been registered for the first time under a systematic first registration program. It goes to the maintenance and sustainability of the results of first registration, and whether the money spent on registration is wasted or not.

Why does this issue matter for first registration?

Having a workable system for the registration of transactions after land has been registered, which people can and do use, is essential if the information created by the registration program, and the various benefits that come to people and the state from registration, are to be maintained. Without a system for continuously updating the records of ownership, boundaries and subsidiary rights, which is cheap and easy enough for people to use, the results of first registration will soon become out of date and many of the benefits of the program will be lost.

What are the causes of this issue?

Commonly, the primary focus of first registration programs is the set of activities involved in identifying and recording parcels and owners. This is understandable because it is the reason for the program, and all energies are dedicated to this challenging task. However, there can be a lack of understanding that first registration is only the initial step in creating a sustainable registration system, which means that first registration can be the sole focus of the program. Sometimes, those designing programs do not know about, forget or ignore the need to have a system in place that permits transactions to be registered after the final determinations have been issued. As a result, at the end of the program, there is no means for updating the information, and it quickly becomes out of date. Eventually, the entire first registration process must be repeated because so much of the information has become unreliable.

Another cause of this issue is that even where the designers understand the need for a subsequent registration system and take steps to provide one, they fail to create a system that is accessible, affordable and relevant to the owners. Or they might make insufficient changes to the existing system, which is inaccessible, costly, slow and suffers from a poor reputation. If the registry is too far away, if its services cost too much or if it is not trustworthy, property owners will not register their transfers, inheritance documents, subdivisions and other types of transactions. This is the more common cause of the problem – existing systems that are inaccessible are kept in the hope that people will use them to register their property transactions, without taking steps to improve access or affordability.
Despite years of experience with this issue, first registration programs are still being implemented that fail to address accessibility and affordability.

What can be done to deal with this issue?

Those designing first registration programs need to be aware that a problem could exist and that a failure to deal with subsequent registration will make the ultimate result of the program, no matter how successful at first registration, a failure. If the records are quickly made irrelevant, and people revert to private deals, then the initial investment is largely wasted. Once they accept this fact, those designing programs need to ensure that they include activities aimed at either creating a subsequent registration system or improving an existing system.

A review of the legal framework should be conducted to determine whether the existing laws are adequate and how they could be improved to cater to a well-functioning subsequent registration system. Where a new law or amendments are required, these should be promptly drafted and enacted.

As to making the system accessible, or more accessible where a system already exists, there are a number of aspects:

- Easy access, with registration offices close to the public. This could include the introduction of local front offices, booths at multi-function centers and mobile offices. As technology becomes more widespread, access via the internet will greatly improve access. Access points should be welcoming and well equipped.

- Good access to information so that people know about the processes, forms and costs involved. Various media can be used to communicate with the public (see section 7).

- Simple legal rules and transaction processes, both for the public and the registry staff, so that the tasks of documenting and registering transactions can be accomplished easily, cheaply and quickly.

- Low fees, taxes and other financial costs. These can also include the costs of professionals in land transactions, particularly lawyers and notaries.

And to promoting the registration of transactions:

- Linkages with local officials, land market professionals and others, to open the way to registering transactions and to create a culture in which registration is both well understood and an automatic step in any transaction.

- Education of owners on the need to register transactions and benefits of doing so.
• Engagement with lenders, including micro-lenders, to build into the lending process a final step of registering the loan transaction.

• Education of staff in customer service and ethics, and creation of a customer focused environment, with a strong anti-corruption culture.

Checklist

✓ Understand the need for an accessible and affordable subsequent registration system to maintain the information created during first registration, and thus ensure the sustainability of the system, its information and benefits.

✓ Conduct a legal review and amend the laws as necessary to establish a sustainable subsequent registration system.

✓ Introduce measures to make the subsequent registration system accessible, such as improved physical access, more information, simplified legal rules and processes, and reduced costs where possible.

✓ Promote the registration of subsequent transactions through creating linkages with land market professionals and lenders, educating owners on the need to register transactions, and developing the registry into a customer-focused, professional organization.

Part 2 Implementation

7. Communications and engagement

What is this issue about?

As the title indicates, this issue concerns engaging with land owners as part of the process of systematic registration, which is a cornerstone and also a key safeguard measure for the entire process. Without participation by owners, which can only be achieved through communications and other forms of engagement, the program will not progress well, and without community involvement (particularly at the public display stage), the quality control and safeguards inherent in the systematic registration process will not operate effectively. It is worth repeating here that the reference to “owners” should be read widely to include not just owners but also occupiers, lessees and owners of other rights, such as mortgages, and all such groups need to be the target of the communications and engagement activities.

Why does this issue matter for first registration?

A failure to engage with owners so that they actively participate in the process of systematic registration will have various negative consequences. There will be gaps in the records
because owners will not come forward to claim their land and present their documents and evidence, which results not just in incomplete and therefore less valuable records, but also in wasted resources and higher costs per parcel. The resulting maps and records will therefore be less valuable. Further, the accuracy of results will be reduced without community participation, leading perhaps to loss of rights and even litigation, and owners will miss out on the chance to benefit from registration.

What are the causes of this issue?

First registration programs generally have some element of communications and engagement because they require owners to cooperate. The registration teams have to make contact with owners to inspect the property and obtain the documents and other evidence. This is a logistical type of communications, and can be considered as a minimum, but it falls short of motivating the community to fully engage in the program. Even where there is some advertising, this too can fall short of what is required. For example, if only a few posters are printed and placed in local government offices or if only a few notices are published in the government gazette, then it is highly unlikely that the message will get across and, more importantly, that there will be acceptance of the message. In a number of countries, there is a belief among officials that the people will do as they are told, so little effort to motivate them is needed, but the systematic registration process requires a more active form of participation and engagement to produce the best results.

Poor communications and engagement can also result from sub-standard design and implementation of the activities. For instance, the communications materials might be poorly designed and delivered, they might miss important target groups (such as mortgagees and the diaspora) due to the lack of an analysis and strategic approach, the messages might not be appropriate or address people’s concerns, the distribution of materials and public meetings might be uncoordinated with fieldwork, the national language might be used instead of the language that local people speak, or the means of communications might not fit local conditions. Many other possibilities can be imagined.

People can fail to engage with a first registration program even if there is a well designed and executed communications program. They might be suspicious about the motives of the government, fearing that the collection of property ownership information foreshadows greater tax collection. People can also fail to engage simply due to inertia. Evidence from one former socialist country, for example, indicates that about ten per cent of the population failed to claim the Soviet era apartments that they occupy, even though the program privatized the apartments at little or no cost and commenced many years ago. And in those countries where there have been a series of land reforms, the population might fail to engage in yet another government land program due to reform fatigue.

What can be done to deal with this issue?

Most importantly, those designing systematic registration programs need to understand the importance of a thorough, well designed and implemented communications and engagement campaign as an input to the success of the program and the functioning of the
quality control and safeguards mechanisms inherent in the process. Examples from other programs can be used to show how communications and engagement campaigns were designed and implemented, what worked well and what did not work, and what kind of impact the campaigns had on the success of the programs.

At the planning stage, a communications and engagement strategy needs to be produced based on an analysis of owners, their concerns, the key messages that are required and how best to communicate with the various categories of owners. The strategy should look at the most effective (and cost effective) means of communicating using the full range of communications options, as well as the timing and regularity of communications and the format for delivery of general and specific messages. An advertising campaign using all forms of media (including social media), based on a recognizable logo and color scheme, should be developed. There should also be national and local press conferences, as well as local level community events. Specific messages and images would be required for identifiable special groups (including women, minorities, disadvantaged groups, the diaspora and also the legal and surveying community and local banks). Local leaders and special group representatives should also be engaged to lead public opinion, and they should receive briefings so that they can disseminate the messages.

Adequate resources need to be allocated to fund the program. This involves not just money to pay for the preparation of materials and their publication, but also the time of officials and communications specialists to make presentations and engage at the local level with communities. Although those involved in technical work might try to cut back on the budget for communications so that resources can be assigned to “more important” fieldwork, this bias must be countered. Where there are sufficient funds, a professional agency could be engaged to help design and also run the campaign, as occurred in the land registration programs of Azerbaijan, the former Yugoslav Republic of Macedonia and Serbia, which had long-term agreements with local agencies to develop and disseminate publicity material.

The program needs to be staged effectively, commencing well before the start of fieldwork and running throughout the program. The messages will change as the program unfolds, with people being encouraged to work with registration teams at the beginning (as well as having the benefits of registration explained), through to encouraging them to view the results and make corrections during public display, to informing them of the appeals process. In the final phase, the success of the program needs to be publicized through such means as awarding certificates at public events, articles in newspapers, television and radio, which in turn lead into the education of the public about the need to register transactions with their properties in the registry (see section 6). Public events, such as ceremonies to distribute certificates, are also a source of free publicity because the local media will often cover them. Television and newspaper coverage in one area can educate people in neighboring areas where the systematic registration program has yet to commence.

All staff, but particularly field staff and those working with the public, should receive training in communications skills and the particular messages that need to be delivered at various stages of the program.
An assessment of the effectiveness of the campaign should be conducted on a routine basis during the program to identify what worked well and what did not. Such an assessment is a valuable source of information on how to adjust the campaign for the next round of communities whose land is to be registered. It is also an opportunity to assess cost against effectiveness of the various means of communication and engagement, and thereby improve future allocation of resources.

Checklist

✓ Understand the need for a well designed and implemented communications and engagement campaign and its role in ensuring the success of the systematic registration process.

✓ Conduct an analysis of owners and develop a strategy for the communications and engagement campaign at the planning stage.

✓ Use a range of media to communicate and engage.

✓ Target special identifiable groups with messages and images that are relevant to them.

✓ Ensure adequate resources are allocated to the communications and engagement campaign.

✓ Engage a professional media agency, if funds permit.

✓ Train field staff and other staff working with the public in communications and the messages that they need to deliver.

✓ Run the campaign over the full cycle of the first registration process, with different messages at different stages.

✓ Utilize cost effective means for communicating as much as possible, including free publicity through local media events.

✓ Conduct an assessment of the campaign’s effectiveness and adjust future activities in light of the results.

8. Effective public display

What is this issue about?

This issue concerns the public display of the results of systematic registration, which is a cornerstone of the process and acts not just as a quality control mechanism but also as a safeguard against people losing entitlements by drawing on the knowledge of both
individual owners (who have a vested interest in making sure that the results are correct) and the entire community (which can draw on everyone’s knowledge to confirm or correct the results). Sometimes, however, public displays are implemented in such a way that owners and members of the community cannot play their role adequately and the accuracy of the results suffer.

Why does this issue matter for first registration?

Unless the public display process is implemented effectively, the quality control and safeguard functions will not operate properly and could even fail. If people cannot see the results and make their contributions, then errors in the fieldwork findings will not be picked up and will appear in the final determination, and expensive litigation could follow. At worst, some people could lose their rights, with consequential negative impacts on their livelihoods and wellbeing.

What are the causes of this issue?

There are various causes of the public display stage not functioning effectively. These include locating the display in places that are far from the owners and community, limited opening hours, insufficient number of days of display, poorly presented results, lack of publicity, lack of staff to explain results and take down objections and other comments, and lack of community engagement. Occasionally, contractors will simply fail in their duty to open the doors of the display venue at the specified hours, either due to poor management or cost cutting. Additionally, some groups within a community, such as women, might face specific barriers to taking part.

What can be done to deal with this issue?

Those designing and implementing systematic registration programs need to be aware of the importance of the public display stage, and its role in providing quality control and safeguards, so that proper attention can be given to conducting the public displays. Not only is such awareness needed when designing the systematic registration program and its schedule, but if contractors are to be used, then those in charge must ensure that the contract fully addresses the contractor’s obligations regarding the public display stage.

Public displays need to be conducted in accessible places, often a public space, that the owners and community can reach easily. It should not therefore occur in a distant town or city. Similarly, the opening hours need to take into account the working hours of the population, and have viewing times early and late, as well as on weekends. People need to be informed about the display through a communications and engagement program, and there needs to be a sufficient number of days of display so that everyone has time to visit. For example, a one week (or even one month) viewing period would usually be inadequate.

The results of the fieldwork need to be presented in a way that people can understand. Simply providing them with maps and a long list of owners’ names is meaningless to most people. The presentation of results needs to be made accessible, such as by presenting
smaller areas separately, and there needs to be sufficient numbers of qualified staff who can explain the results and help people find their property. Staff are also required to assist people with questions about the findings, and also to record corrections (such as the spelling of a name), add information that is missing (such as a personal identification number) or take down objections. Information on how objections will be addressed, and what appeals rights exist if the objection is not successful, should also be available.

The communications and engagement program (see section 7) should have a focus on the public display phase. Engagement with community leaders, such as local political and administrative leaders, is needed to encourage everyone to visit the display. There should, therefore, be special engagement with such leaders, including having them on hand during display periods to work with the owners. As people commonly leave such matters until the last minute, there should be a clear message to come early to avoid crowds.

Finally, there needs to be close supervision of the implementation of the public display activities to ensure that the doors are open, qualified staff are on hand, objections are being taken down, and owners are not confused or dissatisfied. Good management of either the officials responsible for the public display or the contractors engaged to carry out systematic registration is essential. As a visit to a public display venue made during the Albanian registration program showed, when the gates and doors of the venue are locked, it is very difficult to examine the program’s results.

For measures to assist women, who often face specific barriers to taking part in the public display process, see section 13.

Checklist

 ✓ Understand the importance of the public display stage of systematic registration, how it needs to be accessible to owners, and the resources that will be required. Ensure that the obligations of contractors regarding public display are clearly spelled out in the contract.

 ✓ Locate public displays in places that are accessible to the community and have extended opening hours, and ensure that there is a sufficient number of days for everyone to visit. Publicize the display as part of the communications and engagement program.

 ✓ Present the fieldwork results in a way that people can understand and have qualified staff present to help people understand, answer questions, take down objectives and provide additional information, such as information on their appeal rights.

 ✓ Use the communications and engagement program to educate the community and encourage everyone to visit the public display, and engage with community leaders to promote participation.
Closely monitor that the public displays are operating during the agreed days and hours, that there are qualified staff on hand, and that the public understands what is happening.

9. Corruption and improper influence

What is this issue about?

This issue concerns the various forms of corruption and improper influence that can emerge during systematic registration programs and their consequences. Corruption can range from very minor forms, such as asking a favor of the first registration team to straighten a boundary or recognize an informal subdivision, through to major forms of corruption, in which senior officials, politicians or others use the first registration program to grab land. Improper influence, exerted on officials from above, can also take various forms, such as recognizing unsubstantiated claims, altering records, removing documents from the file, or failing to deal with legitimate complaints properly.

Why does this issue matter for first registration?

Corruption matters on two levels: at a higher level, corrupt administration in any sphere of government has various well known negative impacts for the country, its economy and national wealth, as well as the citizens who are forced to engage in it. More directly, if a first registration program gains a reputation for corruption then its results (that is, the property records) could be called into doubt, undermining the very security and reliability that first registration is meant to provide. Also, the public’s participation and faith in the program, which is a cornerstone of the process, could be threatened if it were perceived to be corrupt.

What are the causes of this issue?

As noted in the Transparency International/FAO publication, Corruption in the Land Sector, “Corruption in the land sector can be generally characterised as pervasive and without effective means of control.” Corruption in the land sector is caused by many of the same factors that give rise to corruption in other areas of government, such as lack of concern for the rule of law, an environment in which corruption is permissible, lack of checks and balances, low salaries, etc. The land sector, however, is a particular area of concern for corruption because highly valuable assets are often involved.

What can be done to deal with this issue?

Systematic registration programs can incorporate a variety of measures to eliminate or minimize corruption opportunities, as follows:

- Establish a solid legal basis and issue clear instructions that minimize the extent to which officials can use their discretion.

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8 http://www.fao.org/docrep/014/am943e/am943e00.pdf
- Educate owners about their rights, including appeal rights, and provide information to citizens in a manner that they can understand, including in minority languages, and distribute that information widely.
- Adopt measures that incorporate checks and balances, such as three person teams making decisions and the requirement for all decisions to be in writing, which make it difficult for corruption to go un-noticed.
- Recruit staff from outside the area in which the first registration program is being implemented who have no ties to local politicians, officials or others.
- Provide citizen advocates who can develop expertise in first registration and represent the interests of citizens.
- Establish a complaints or corruption hotline.
- Ensure that the objection, appeals and redress mechanisms function well, and establish a reporting system covering the number and outcomes of appeals. The public display and appeals process, which are fundamental to systematic registration, are covered in sections 8 and 3 of this paper respectively.
- Provide full public disclosure of the results of first registration, with reporting both in the local area and nationally in widely accessible ways, such as newspaper, notice boards and on the internet.
- Create digital records that are stored in two places, which not only provide a good backup for the data, but also make it difficult to tamper with documents or “lose” them.
- Conduct a review of the process and its results by an independent third party, such as an ombudsman. Work with the national anti-corruption agency, if one exists.

Further measures, outlined in *Corruption in the Land Sector*, are recommended for other areas in the land sector, particularly registry operations, urban planning, state land management and customary tenure.

Checklist

- Establish a solid legal basis and issue clear instructions that minimize the extent to which discretion is used by officials.
- Educate owners about their rights, including appeal rights, and provide information to citizens in a manner that they can understand, including in minority languages, and distribute that information widely.
- Adopt measures that incorporate checks and balances, such as three person teams making decisions and the requirement for all decisions to be in writing, which make it difficult for corruption to go un-noticed.
- Recruit staff from outside the area in which the program is being conducted who have no ties to local politicians, officials or others.
- Provide citizen advocates who can develop expertise in first registration and represent the interests of citizens.
✓ Establish a complaints or corruption hotline.

✓ Create digital records that are stored in two places.

✓ Ensure that the objection, appeal and redress mechanisms function well, and establish a reporting system covering the number and outcomes of appeals.

✓ Provide full public disclosure of results of first registration, with reporting both in the local area and nationally in widely accessible ways, such as newspaper, notice boards and on the internet.

✓ Conduct a review of the process and its results by an independent third party, such as an ombudsman. Work with the national anti-corruption agency, if one exists.

10. Staff instructions and training

What is this issue about?

As the title indicates, this issue concerns the instructions and training that need to be provided to the staff of a first registration program so that they can do their jobs efficiently, correctly and in a nationally consistent manner. “Staff” in this context covers both government officials as well as those temporary employees who carry out first registration activities, either as individual consultants or as employees of a contractor.

A failure to provide clear instructions and deliver appropriate training is a major omission in the preparation of first registration programs. Due to improved design and management of programs, this problem occurs less and less, but where countries have embarked on first registration programs without providing clear instructions and proper training to those responsible for conducting the work, their results have often been poor, particularly in terms of the number of finalized cases.

Instructions and training are cross-cutting matters in land registration and administration, so the following discussion and recommendations can be applied to other areas of land administration, particularly subsequent transaction registration.

Why does this issue matter for first registration?

It is obvious, but worth stating, that without clear instructions, staff will not know how to go about first registration. As first registration is a specialized process, few (if any) staff will have all the required knowledge at the start of the program to correctly carry out their duties. Learning on-the-job is not an option due to the complexity of the process, the many different types of cases that can arise, and the need to produce high quality results immediately, even in a pilot program. Instructions are essential for the tasks to be conducted in a legal, efficient manner, with minimal room for discretion and associated
opportunities for corruption, and for the work to be completed in a nationally consistent manner.

Similarly, without adequate training, staff will have difficulties in applying the laws, regulations and instructions. They will not be fully familiar with the rules in a practical way, they will not have developed the specific skills required for first registration, and they will depart from a nationally consistent approach as they carry out tasks as they see fit. They will be slow and inefficient. At worst, they will fail to complete their tasks, and in doing so, they will waste time, money and valuable public support. Further, poor performance due to a lack of training exposes staff to stress and conflict, and possible accusations that they are seeking improper payments, with the consequential negative impact on the program itself.

What are the causes of this issue?

While most countries manage to adopt the laws and even regulations to support first registration prior to a program’s commencement, the development of instructions and guidelines (which includes case studies and practical examples) is sometimes missing at the start. Unless those designing and implementing the program understand the importance of instructions and their role in the process, they will not allocate resources to developing them, including resources to continually update the instructions as new issues are identified. Commonly, there is a belief that the law covers everything, so no other materials are required. A lack of instructions can also occur because management does not yet understand the practical issues that will be confronted in the field, so they do not envisage that any further information (other than the laws, etc.) would be required. Further, there is likely to be a lack of people with the necessary experience to draft the instructions even if management understands the need, particularly in countries where first registration programs have not been conducted in recent times. Finally, a lack of instructions can simply be due to poor project management, even if the need for instructions is understood, with their drafting being omitted from, or incorrectly scheduled in, the program plan.

Additionally, but to a lesser degree, there is sometimes inadequate understanding of the importance of training, or a lack of time and resources that are required to develop a formal, well-structured and complete training program. Instead, staff are sent copies of laws, regulations and orders from the headquarters, and they are left to their own devices to interpret and apply these formal directives. Similarly, even if the need for training is understood, the type of practical, case-based training required to apply the laws, etc. might not be understood. Nor, commonly, is there an understanding of the role of soft skills, such as communications and dispute resolution, which are required to successfully implement a systematic registration program.

What can be done to deal with this issue?

Most obviously, those designing and implementing the program need to understand that there is a requirement for instructions and appropriate training prior to the commencement of fieldwork. In an environment where managers are under pressure to quickly commence fieldwork and deliver results to their political superiors, it can be difficult to delay the
commencement of activities while instructions are being drafted and training conducted. Examples from successful (and unsuccessful) first registration programs are therefore needed to show how a failure to instruct and train staff at the outset will result in sub-standard outcomes.

One good example comes from the highly successful Kyrgyz Republic first land registration program, in which detailed materials and training were provided to staff prior to the start of fieldwork. Materials were developed with international technical assistance, training was provided at two dedicated centers, and recruits were required to pass an examination before they were employed.

Of equal importance, the legal framework, including laws, regulations and orders, needs to be drafted and in place. Subsequently, instructions, guidelines or a manual need to be drafted. They must explain the various steps in the systematic registration process, interpret the legislation, and cover the full range of practical issues that registration teams can be expected to encounter. The instructions need to be continuously updated as experience grows. These documents need to include practical examples and they need to be widely available to staff.

Forms should be developed as part of the instructions. The forms should facilitate the investigation and decision making process, and they should incorporate reminders about key matters that can be missed, such as women’s rights and recording personal identification numbers (where they exist), by marginal notes or footnotes or hyperlinks.

The drafting and adoption of instructions should be a key milestone in a first registration program, and included in the management plan. It should be completed at the preparation stage or in year one, and it could be made a trigger for further investments, particularly the acquisition of equipment (such as cars, surveying equipment, IT hardware). This should ensure that the management team understands the importance attached to instructions. Failure to do so will have ramifications throughout the program. For example, in one land registration project in the MNA region, guidelines on first registration had not been drafted or adopted by the time the project was suspended after three years of inadequate results from the field. The lack of such instructions was seen as a key failing in guiding otherwise capable staff in how to conduct their activities efficiently.

Foreign technical assistance, foreign examples and study tours can be an important means of developing instructions where local expertise is limited. Foreign technical assistance for preparing the instructions should be incorporated into the budget or sought from donors. Those who have already experienced the problems encountered in the field are a great resource, even if their experiences come from other countries. They should work with a dedicated local team that is responsible for delivering the instructions.

Similarly, collegiums and forums of staff involved in first registration need to be held on a regular basis to deal with issues as they arise, and the results should be reflected in clear

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directions for new or novel cases. It is also important to share the experiences of field staff, who are actually implementing the first registration work, with the headquarters. Field staff are well placed to develop appropriate solutions, but they are sometimes ignored. Their input is very valuable when updating the instructions.

A well-structured set of training courses should be developed, with common courses for all staff and specialist courses for those engaged in specific areas, such as surveying, public outreach and law. The issues to be covered should not be restricted to technical issues concerning surveying and legal documents, but should also cover communications, dealing with people, dispute resolution, special concerns for certain groups (women, minorities, children), etc. A training team needs to be constituted, and its functions reflected in the program plan.

Training centers need to be established. They can be mobile or permanent centers, as long as they have adequate resources. As well as formal presentations, the courses should incorporate practical sessions and role playing, which allow staff to develop skills in a safe environment. Soft skills in dealing with owners are just as important as the technical skills required to measure boundaries and assess documents. For example, dealing with two neighbors who have had a boundary disputes for many years requires not only skills in surveying, but communications and negotiations.

Examinations should be conducted at the end of each training course to ensure that the staff are equipped to begin work. This applies even where the staff are employed on a temporary basis or are a contractor’s employees.

Checklist

✓ Understand the need for instructions and proper training, and the type of practical, case-based explanations that will equip staff to deal with the situations that they encounter in the field.

✓ Use successes and failures of other programs to illustrate the important role of instructions and training.

✓ Once the legal framework is in place, focus on drafting of instructions, which include practical examples and case studies.

✓ Include forms, with prompts, to assist staff in gathering information in a complete and structured manner.

✓ Make instructions widely available to staff, in various media.

✓ Incorporate the drafting of instructions and training of staff in the work plan. Make the drafting of instructions a key output of the initial stage of the program.
Use foreign expertise and study tours to understand the need for instructions, what they should cover and how staff should be trained.

Update instructions as new cases emerge, and draw on the field staff’s experiences and suggestions in doing so.

Develop a training program and courses. Courses should include formal presentations, practical case studies and role playing. Include soft skills, particularly communications and negotiations, in any training program.

Establish training centers (permanent or mobile) and resource them adequately.

Include examinations at the end of training, and permit only those who pass to carry out fieldwork.

Part 3 Owners

11. Failure to capture all rights and right holders

What is this issue about?

This issue concerns the failure of a systematic registration program to capture all rights and right holders during the fieldwork and legal investigation stage, and what can be done to improve the data capture. Such failures can result from poor legislation and procedures as well as poor implementation and communications. But in failing to do so, one of the basic objectives of the first registration program will not be met, that is, to systematically capture and record all rights and right holders. This issue gives rise to the consequential need for a mechanism to deal with outstanding rights and right holders’ claims that are missed, and which must be reflected in the records after the systematic registration program has been completed.

Further, this issue is closely tied to the design question about how best to go about systematic registration from a cost-benefit perspective and whether a thorough investigation is best, or whether a rapidly implemented data conversion program that misses some rights and right holders, but which can be captured subsequently through a remedial process, is a better approach than a slower program that seeks to capture all information. The design question has been raised separately in Part 1 of this paper.

Why does this issue matter for first registration?

Capturing all rights and right holders, so that there is a complete record and also so that all right holders can benefit, is a basic objective and design feature of a systematic registration program. To fully achieve that objective, a systematic registration program also needs to identify and record all subsidiary rights such as leases, mortgages, servitudes/easements,
etc.\textsuperscript{10} In this way, resources are used most efficiently and the results are more complete and therefore more useful. A failure to identify rights and right holders is not only inefficient and inconsistent with the aim of systematic registration but it can cause the community members to doubt the process if they see that some people are left out. This may raise questions of possible corruption, and undermine public support for, and engagement in, the process and confidence in its results.

Further, the issue matters because correcting incomplete records either during the objection or appeal phases, or even after the program has closed, can be a less efficient approach and requires specific (and different) resources. A failure to correctly identify all rights and right holders can even result in costly and time consuming disputes, and at worst, the loss of some rights holders’ property, with subsequent stress, costs and negative impacts on their livelihoods and wellbeing. High numbers of problem cases can also threaten political support for the program.

What are the causes of this issue?

There are a number of causes for missing rights and right holders during a systematic registration program. In relation to the failure to capture rights, this can be due to:

- a poorly drafted or incomplete legal framework, which fails to adequately cover rights, and also poorly drafted procedures;
- poor instruction materials or training, which result in a failure by field staff to understand that all rights need to be identified and recorded;
- a failure by field staff to properly inspect the property and identify features that would suggest the existence of other rights (such as fences, track marks, etc.), whether due to poor implementation and work practices, lack of a legal right to enter the property, lack of time or other reasons;
- a lack of physical indicators (on the ground) that the right exists, which can hinder identification of rights such as easements/servitudes, even if the registration teams inspect the whole of the property and know what they were looking for;
- a lack of contact with owners, particularly where the property is vacant or the owners live elsewhere;
- a failure to explain the legal obligations to owners to reveal all rights and the consequences of concealing information. Without prompting, owners might not know that they have to disclose all rights affecting the property (particularly subsidiary rights such as mortgages, leases, easements/servitudes, etc.) or they might conceal such rights if they think they can. The situation of mortgagees is particularly challenging because loans might be informal, owners might not admit their existence (either innocently or fraudulently), and lenders (particularly banks) might not have a local presence;

\textsuperscript{10} In a small number of exceptions, such as for the rights of spouses and certain subsidiary rights, particularly easements and servitudes and short-term leases, the law often provides protection without recording, so that these rights do not need to be identified and recorded for the owner to receive protection. However, there are clear advantages to capturing all such rights during the systematic registration process.
• a failure to ask the necessary questions that would prompt the owner to give a full account and reveal other rights;
• a failure to explain to subsidiary right holders that they are part of the program and to encourage them to come forward to claim their rights. Owners of subsidiary rights might not be aware that they should engage with the program, they might not be aware that subsidiary rights are to be registered, or they might not be aware of the program itself (particularly if they live outside the area where fieldwork is underway or even overseas).

These failures can be collectively considered as a poor regulatory framework, lack of guidance and training on how to identify all rights, and a failure to communicate and engage.

In relation to the failure to capture right holders, this can be due to:

• a poorly drafted or incomplete legal framework, which fails to adequately identify right holders, and also poorly drafted procedures;
• a lack of contact with owners, particularly where they live elsewhere, so they are unaware that they can or should take part in the fieldwork activities due to an inadequate communications and engagement program, or poor implementation of that program;
• a failure to understand the types of right holding arrangements that might exist, such as beneficiaries under a will, spouses in relation to matrimonial property, children in relation to family lands, etc.;
• a failure to take action to address cultural factors that restrain wives, for example, from coming forward to claim their matrimonial rights, or daughters coming forward to claim their inheritance;
• a failure to have field staff who can engage with local people in their own language, particularly relevant to minorities;
• a failure to ask the necessary questions that would prompt the owner to give a full account and reveal other right holders, such as how the property was acquired – by marriage, inheritance, etc.;
• poorly designed forms that do not have space for multiple owners’ names.

Here, too, these failures fall under the headings of a poor regulatory framework, lack of guidance and training, and a failure to communicate and engage.

What can be done to deal with this issue?

This is not a simple matter to fully address due to the difficulty in identifying rights, particularly subsidiary rights, and certain categories of right holders as outlined above. However, there are a variety of activities that can be implemented to reduce the number of cases of failure to identify rights and right holders. These are to:

• ensure that the law makes it clear that the systematic registration process covers not only ownership but all subsidiary rights. There should be a clear definition of rights;
• through clear instructions and good training, ensure that the registration teams understand that all rights need to be identified and recorded;
• through proper supervision and oversight, ensure that all properties are inspected, based on a statement in the law that gives the field staff a legal right of access (after notice is served);
• use case studies and examples in the instructions and training to show how subsidiary rights can be identified even if physical indicators are not present or obvious;
• utilize the communications and engagement campaign to ensure that owners and subsidiary right holders know about the program and take part. Publicity for the fieldwork activities needs to be wider than just the local area to capture those who live outside the immediate area;
• ensure that all owners understand their obligation to disclose subsidiary rights and work with other local people to confirm the situation;
• include specific questions in the fieldwork teams’ instructions that they can ask to prompt owners to give a complete description of existing rights, and provide training to the teams in communications;
• establish a relationship with local lenders and keep them informed about the schedule for fieldwork so that they can provide their input.

As to right holders, the program should:

• ensure that the law and procedures cover all right holders, with the law including a wide definition of right holder;
• design and conduct a proper communications and engagement program that addresses the problems noted above;
• have clear messages about subsidiary rights as part of the publicity and communications campaign which specifically identifies subsidiary right holders as beneficiaries and informs them of the need to come forward and claim their rights;
• ensure that the publicity and communications program extends over the country and even beyond. The communications and engagement program needs to recognize that not all landholders will be living in the local area. Communications need to reach out to other parts of the country using national media. While it is much more difficult to reach people living in other countries, much can be achieved through contact with embassies, religious and cultural centers, articles in local language newspapers in other countries, web site information and word of mouth. All materials should also be published in minority languages of the area in which the program is to operate;
• take actions to overcome barriers faced by certain right holders, such as women, to engage in the process. Deliver specific messages for women, make special procedures and facilities available as required, and engage a women’s advocate (see section 13);
• work with land professionals and lenders to publicise the program and ensure that their clients’ interest are identified;
• provide clear instructions and train fieldwork teams in the types of right holding arrangements that can typically exist and how to identify other right holders. Make
them aware that there can be multiple right holders over a single property – both as to “owners” and holders of lesser rights, such as leases and mortgages. Case studies and examples, in both the instructions and training, are needed to highlight these matters;

- ensure that the fieldwork teams are given questions that prompt owners to give a full picture of the ownership, particularly as to how the property was acquired, and ensure that the teams are trained in asking these questions. Require the teams to make thorough inquiries about how the property was acquired. Often the means by which a person becomes the owner of a property gives an indication as to who else might have an interest. For example, if the property was acquired through inheritance, then the other heirs might still be owners, or if the property was acquired while the claimant was married, then it probably also belongs to his or her spouse. If someone gained property from his or her deceased brother or sister, did the deceased have children? If so, perhaps the property belongs to those children;
- ensure that forms leave space for the names of all right holders, not simply the “head of household”, and that there is space for including full names and personal identity numbers (if they exist), which are checked for accuracy;
- through proper supervision and oversight, ensure that the fieldwork teams follow these steps;
- ensure that the objections phase of the program functions efficiently so that any rights and right holders that have been missed can be incorporated in the final results (see section 3).

What can be done with rights and right holders that are missed?

Even where the fieldwork teams do everything correctly, it is still possible to miss some rights, whether as to ownership or subsidiary rights. However, there can be a failure to provide a mechanism for recording such missing rights and right holders after the program has closed, either due to a belief that the program will capture all rights and right holders or simply a lack of awareness that the problem could even exist. Those designing and implementing systematic registration programs can also underestimate the magnitude or extent of the problem even when they are aware of its existence.

To capture rights and owners after the systematic registration program has been finalized, there must be a specific means by which outstanding rights are recorded and owners, particularly beneficiaries under a will, can have their ownership recorded. Therefore, at the design phase of the systematic registration program, those designing it need to understand that this problem will arise and that it will need to be addressed.

The law should recognize that not all rights will be identified and incorporate a provision that allows updating, without penalty, within a specified period of time (such as three, six or 12 years). Procedures need to be developed, and staff trained in how to apply them. There also needs to be publicity, particularly with key stakeholder groups (such as banks and the legal professionals) about the process. It is important to protect third parties who are using the register’s information during this period. The law and the registry should therefore make it clear to anyone relying on the records that outstanding rights could exist
and that the register is not guaranteed as being complete. This can be achieved by including a note on any search, extract or inquiry results. Finally, the cost of making an application to update the information should be free (or relatively low) to ensure that there is no financial barrier to completing the work.

Checklist

As to rights:

✓ ensure that the law, procedures, instructions and training cover these issues, particularly that all rights and right holders are to be part of the program;
✓ oblige fieldwork staff to inspect the properties, and specify in the law that they are entitled to enter properties after giving notice;
✓ ensure that all owners understand their obligation to reveal the full range of rights and right holders of the property;
✓ work with local lenders to ensure that mortgages are identified; and
✓ oblige fieldwork teams to ask questions of the owners that prompt them to explain the situation fully.

As to right holders:

✓ ensure that the communications and engagement program reaches all right holders and it encourages them to take part in the program;
✓ train fieldwork staff in how to ask questions that would reveal other owners;
✓ design forms with space for more than one owner;
✓ take specific actions to overcome barriers faced by some members of the community in protecting their land rights; and
✓ ensure that the public display and objections phase runs efficiently.

As to rights and right holders that are missed, introduce a relatively simple, cheap and quick mechanism for their rights to be recorded.

12. State land

What is this issue about?

State land is not a single issue but a multitude of issues with a common denominator – the land is owned or managed by the state. The concept of “state land” covers a range of types of land, such as the public domain, the state’s private domain, land that is occupied by third parties with the state’s permission (such as leases), natural resources and the rivers and coast. In fact, the concept really refers to any land that is not privately owned either by individuals or corporations.

Due to space constraints, the following discussion covers only two aspects of state land, but these commonly arise during systematic registration programs. These are: 1) the need to engage officials to protect the state’s interests during the registration process; and 2) the
need to deal with claims based on occupation of state land that are revealed during systematic registration.

Why does this issue matter for first registration?

It is important to ensure proper representation of state owned land for several reasons. Firstly, as for all property owners, the state’s interests should be protected during the first registration program. Unless someone can represent the state’s interests, it is very likely that land will be lost through occupation or encroachment, or it will simply not be identified as belonging to the state, particularly where the existing records are poor.

Secondly, managers of state land (such as ministries for agriculture, forests, defence, etc.) often have valuable records on the land that they manage, which can be very helpful in the first registration process. Particularly where they are responsible for large areas, it is important for managers of state land to be part of the program so that both the quality of the data is high and the coverage of the area registered is maximized. Such involvement will help to ensure that the results of the program are comprehensive so that state land can be managed in a more informed way and the entire community has access to data on state land for other purposes, such as planning, disaster management, environmental management, etc.

Thirdly, a failure to properly deal with encroachments and long-term occupation of state land can damage community support for the first registration program, and even create antagonism towards the program if it causes people to be removed from the land that they occupy. From the viewpoint of occupiers, too, a sudden end to their occupation of state land, which they have used for housing or income production, can have a serious negative impact on their lives and wellbeing. Thus, a state representative needs to be engaged in the process to address and ideally formalize such occupations as part of a parallel process or, at a minimum, permit some form of occupancy as an interim measure that would allow the occupiers to apply for the land or find alternative land.

Lastly, registering state land as part of the overall registration program is the most efficient, cost effective means of capturing state land in the registration system, even if it will not be traded subsequently, and creating complete maps and records that benefit all.

What are the causes of this issue?

In some countries, there is no easily identifiable body that is responsible for the management of state owned land, particularly at the local level. While there might be a national level body with general responsibility, on the ground there is likely to be a range of government bodies that have interests in state land, such as municipalities, utility suppliers, representative agencies of ministries and national infrastructure bodies, and semi-commercial bodies. Other land, which is not allocated to any government body, or for which there is no record of the agency responsible, will probably have no local representative. Further, there can be wide variations in the level of engagement of officials in representing the state’s interest in such land and also in the knowledge, capacity and
available time of the officials with responsibility for state land. It can therefore be difficult to find the right person to protect the state’s interest in land, to match that person (or anyone) to a particular area, and to have that person take an active role in the systematic registration process.

Further, those who have custody and management of state land can sometimes be opposed (either actively or passively) to systematic registration programs. Making an accurate record of all state owned land is often not in the interests of those managers and politicians who benefit from the uncertain status of state land to allocate or lease out that land at below market levels and thereby secure corrupt benefits for themselves. Experience in Serbia, for example, showed that there was systematic under-pricing of leases of land managed by the state to the benefit of the local officials in charge of managing that land.11

There are various causes for the occupation of state land by private persons or corporations. It can occur because no one is actively monitoring the situation and excluding people from occupying the land. Therefore, vacant state land becomes available for use, albeit informally. In times of war, disaster or emergency, people might be forced to occupy state land as they have nowhere else to go. Occupation of state land can also occur because the occupier is unaware of the location of the boundaries of his or her land and innocently encroaches onto an adjacent area owned by the state, or he or she believes the land to be otherwise available for occupation.

What can be done to deal with this issue?

Engaging with the managers of state land at an early stage in the preparation of a systematic registration program is important. The importance of the program and its benefits, plus the need for active involvement of state land representatives should be impressed on them. Care must be taken that other agencies do not hold up the process by refusing to cooperate and provide their records (at risk of revealing poor management or corruption, as noted above). It might be necessary therefore to have ministerial level engagement to secure the cooperation of state land managers, or even the direct involvement of the prime minister.

As a first step, the various bodies need to be identified. Then, managers of large holdings, such as those responsible for forests, roads, defence, farmland, pastures, etc., need to be engaged directly in the process and, if possible, their records should be made available. Similarly, municipalities should be contacted because they often have large areas under their control. Once the process of systematic registration begins, nominated persons need to take part in the fieldwork and investigation activities. They also need to check the findings during the public display period.

In some countries, where there is no agency directly responsible for state land management at the local level, a body with general responsibility for the state, such as the public prosecutor’s office, will be engaged to represent the state. However, without specialist knowledge and records, it is very likely that the public prosecutor’s involvement would be a formality. Often in such situations, it falls on the land registration authority to protect the

11 Personal communication, Director of Restitution Agency of Serbia, 22 March 2013.
state’s interests. Therefore, the land registration authority needs to be prepared to take an active role in protecting the state’s interests and to allocate the necessary resources if required.

Dealing with occupations of state land need to be addressed through a parallel process if possible, or through a subsequent process. As allocating rights over state land is outside the ambit of a systematic registration program, once occupation of state land is identified, the ownership of that land by the state should be recorded, and the circumstances and presumptive rights of the occupiers should be documented for immediately regularization or future action. Ideally, the regularization of occupation of state land could take place quickly as part of a parallel process, and then the results could be reflected in the register at the same time that systematic registration is concluded. This approach was successfully adopted in one pilot area in Romania, where the local authority made the decisions to allocate land in coordination with the systematic registration program. Regularization could range from short-term licences to occupy all the way through to granting ownership of the land to the occupant. If regularization cannot occur immediately, there should be a recording in the register that the state land is subject to some form of occupation or claim, and that proceedings are underway to regularize the occupation (if that is the case).

It is assumed in the discussion immediately above that the legal framework would permit occupation of state land to be regularized, and that there is a process that is relatively simple, inexpensive and accessible. Were that not the case, then appropriate action would need to be taken to address those shortcomings through research, policy engagement, adoption of legislation, development of procedures and implementation of those procedures.

Checklist

- Identify and engage with those responsible for managing state land early in the preparation of the program at a national level.
- Utilize the land records of each ministry and agency that has state land holdings in a particular area.
- Prior to commencing fieldwork in each locality, engage with local level officials and municipalities.
- Where nobody is responsible, the land registration authority might need to take on the responsibility to represent the state’s interest.
- Regularize occupations of state land as part of a parallel process where possible. Otherwise, make a record of occupations of state land that permit regularization to occur subsequently.
13. Women, minorities, children

What is this issue about?

This issue concerns the problems faced by women in being able to engage in first registration programs on an equal basis with others in society, and the special additional steps that need to be taken to overcome barriers and hurdles to their participation. This issue also affects minorities\textsuperscript{12} and children, although they can also have concerns that are particular to them.

Why does this issue matter for first registration?

A systematic registration program should create opportunities for all members of the community to participate equally in registration, so that everyone has the opportunity to protect their rights and enjoy the other benefits of registration. A failure to deal with the special needs of women, as well as minorities and children, could see them missing out on the benefits. Additionally, a failure to include all owners no matter their gender, ethnicity, religion or age could undermine the validity of the registration process in the eyes of the community, which in turn could result in lack of public engagement and trust in the outcomes. Further, a failure to capture all properties and owners is not as cost efficient as a program that covers all rights at the same time. In the extreme, a failure of women, minorities and children to participate in first registration can result in the loss of their rights if others step in to claim those rights, with consequential threats to their livelihood and wellbeing.

What are the causes of this issue?

Women face a variety of barriers to taking part in some aspects of society, including cultural, educational and financial barriers, and taking part in a land registration program is no different. Culturally, women might not be permitted (either expressly or impliedly) from taking steps to protect their land rights, particularly in inheritance cases and for matrimonial property; they might be excluded because they cannot read or write; or they might not have the financial resources or time to engage, even where first registration is free, because they cannot travel or take time away from work or home. There is a great deal of research on the barriers faced by women, which should be consulted to better understand such problems.\textsuperscript{13} These barriers can, and often do, also apply to members of minorities. Children (particularly orphans) face even greater barriers, although little attention has been paid to them in systematic registration programs.\textsuperscript{14}

\textsuperscript{12} Minorities, as used here, can mean linguistic, social, ethnic minorities and potentially men in matrilocal societies, where a husband marries into a wife’s family, such as in Laos.

\textsuperscript{13} Gender in Agriculture Sourcebook
FAO Governing Tenure for Women and Men,
http://www.fao.org/docrep/017/i3114e/i3114e.pdf

\textsuperscript{14} The discussion here relates primarily to orphans, such as those children whose parents have died through conflict or disease, and are under the care of other relatives or organizations. There is potential for orphans, who sometimes cannot speak for themselves, to be overlooked during systematic registration, particularly if
Another cause of women being excluded can come from the legal framework, which can have express or implied barriers regarding women and their property rights. Express hurdles could include prohibitions against them holding property, or holding property solely by themselves, or dealing with their rights without another’s permission. Implied hurdles could include omission of any mention of women or a failure to specifically address in the law the barriers that they face with positive statements to overcome cultural norms.

A further cause of this problem is the failure of those conducting systematic registration to be aware of the hurdles faced by women and their particular needs. Women are sometimes simply ignored. Procedures and forms, for example, can be designed in such a way that they omit any possibility of women taking part in the process, such as by having space only for the head of household’s name. Minorities can face similar hurdles as well as language barriers, and the needs of children receive little or no attention.

What can be done to deal with this issue?

There are numerous steps that can be taken to address the barriers faced by women and to encourage and empower them to take part in a systematic registration program.

Awareness of the problems and need to take action: often, those designing and implementing systematic registration programs will not be aware that there is any problem, so it is necessary to make them aware that problems can exist and that remedial action needs to be taken. Experience shows that this is not a simple matter as most men and many women refuse to accept that women have problems in relation to land, even when they are presented with statistical evidence which demonstrates gross inequalities in ownership.

Review of the social and legal context: as a preliminary step, there should be a thorough investigation of the social setting, with a focus on property ownership and the issues facing women, which could also recommend appropriate actions to overcome such issues. An assessment of the legal framework should be prepared, noting provisions that facilitate and also impede women’s ownership and their ability to deal with their property rights.

Legal reform: if necessary, the law should be amended firstly, to remove any obstacles to women’s involvement in the program and secondly, to actively facilitate their involvement. More broadly, legislative reform is necessary to allow and encourage women to obtain and use property rights.

Communications, education and publications: as part of the communications and engagement program, there should be a special focus on women. Pictures of women should be included in all publications; there should be text dealing specifically with women; and

their carer (such as a grandparent, uncle or aunt) claims the property right for himself or herself or is assumed by the registration field staff to be the owner without proper investigation. However, in some limited cases, children within families can have property rights (such as through division of collective farms in some countries of the former Soviet Union) that are separate from the rights of their parents.

15 See Gender in Agriculture Sourcebook for suggestions on the types of reforms that can be introduced.
there should be public meetings for women (see section 7). Publications can also cover specific matters for women, such as their legal rights and entitlements. Awareness raising of the problems facing women should be held with officials, staff, community leaders and others who are closely involved in the systematic registration program as part of the broader educational activities. The relevant laws concerning women’s rights can be published in a booklet and incorporated in the instructions to staff.

Processes and procedures: the steps of the systematic registration process should include positive actions to elicit and identify women’s rights, to give them opportunities to take part, and to ensure their consent and engagement (particularly in relation to matrimonial property). The process can be designed to deliver these outcomes through mainstreaming concerns for women in each of the program’s activities.

Instructions and forms: field staff should have clear instructions on how to assess whether women of the household have rights, including subsidiary rights, and how they should ask questions to get an accurate picture of the situation. Forms should be designed to facilitate this process, with hints and reminders of what needs to be identified. Also, the forms should make room for multiple owners, rather than just “head of household”, and subsidiary rights.

Field staff and training: there should be a mix of men and women in the field, including at the field offices and public display. They should have training in problems faced by women in protecting their property rights, the legal rights of women, how to best communicate, how to use the instructions and forms (as above) to overcome barriers, and how to work with NGOs and women’s advocates to get the best results.

Public meetings and women’s advocates, including engagement with NGOs: meetings should specifically address women and their rights, and there could be meetings just for women. It can be useful to engage a women’s advocate who can directly advise and represent or counsel women during the process. Building a close relationship with women focused NGOs or community groups can give access to useful networks, bodies of knowledge and assistance.

Hours and access: the fieldwork and public display activities should be conducted around times that not only suit the staff but also the owners. This can mean after hours, weekends, after markets have closed, etc. depending on the local setting. Women only service times or even days should be considered. Public displays should be located close to where people live so that everyone has easy access, particularly if they have other duties at home.

Data collection and evaluation: gender disaggregated data should be collected on participants at meetings, field staff, inquiries at the public display and ownership of property (including subsidiary rights). All reports should include a gender section, which can assess the extent to which systematic registration is facilitating the recording of women’s rights and what needs to be done to better communicate, encourage engagement and deliver better results.
Many of these initiatives are useful, when modified, to facilitate the engagement of minority group members in systematic registration. For example, communications and publications need to be in minority languages. Children encounter much greater barriers, but the use of advocates, NGOs, legal aid and other services to look out for their rights can go some way toward protecting their interests.

Checklist

✓ Educate senior management on the barriers faced by women and the need to take steps to overcome those barriers.

✓ Review the social and legal context, and introduce reforms to the legal framework if necessary.

✓ Ensure women are a particular focus of the communications and engagement program.

✓ Mainstream women in the processes and procedures of systematic registration.

✓ Draft instructions and forms to capture women owners and their rights.

✓ Have a mix of male and female field staff, and provide training in gender issues to all.

✓ Conduct meetings for women, work with women’s NGOs, and engage a women’s advocate to represent women.

✓ Adopt working hours and set meeting times that take into account the responsibilities of women in the home and at work.

✓ Collect gender disaggregated data and report on women’s participation.


What is this issue about?

The issues concerns the challenges faced during systematic registration when the program deals with indigenous peoples and other communities with customary tenure systems, and the extra steps that need to be taken to engage with such people and to ensure that their rights are identified and recorded.

Why does this issue matter for first registration?

Programs to register property rights, such as through systematic registration, should cater to all members of the community, and take action to make the program accessible to all. This includes indigenous peoples, who can face specific barriers and also have particular
needs that should be addressed so that they can benefit from the program equally with other members of the society. Further, if the specific issues raised by indigenous peoples are not considered, systematic registration could exacerbate conflict, violate legitimate rights and generate tensions that neutralize efforts carried out by the program, particularly where the land being registered is under pressure due to the advance of the agricultural frontier, growing interests in the exploitation of natural resources, increases in migration, displacement of populations affected by armed conflict which can often be seen in areas traditionally occupied by indigenous communities.

What are the causes of this issue?

Regarding the recognition of rights (see Part 3), legal frameworks in many countries do not capture adequately the rights of indigenous peoples and other communities with customary tenure. Despite the fact that national constitutions in 104 countries have provisions recognizing customary practices and 32 countries have specific provisions on customary land tenure and resource rights, implementation of these provisions is very poor. In some countries, national laws ignore customary tenure or consider such land as vacant state owned land; in others, some forms of customary tenure are acknowledged as occupation or possession but not worthy of a registered title. It is also very common that land administration organizations act in an uncoordinated manner, following their own sectorial agendas – granting concessionary rights for resource use to large firms, for example for timber or hydrocarbons exploitation – and disregarding the traditional forms of use and management of territories by customary systems.

Regarding the design of programs (see Part 1), indigenous peoples and other communities with customary tenure systems usually have insufficient or no official documentation to support their tenure rights. In many countries, the evidence accepted by law to prove tenure rights are associated with the agricultural use of land and are unable to capture the complex forms of resource use by communities that live there (such as seasonal harvesting, fishing and hunting, nomadic herding and other ways of resource management). In some cases, the need to comply with the agricultural-focused proof of tenure has produced incentives for deforestation by colonos and communities wanting to receive title. This situation is an indication that indigenous peoples and other communities with customary tenure systems have a peculiar views of the cultural, social and religious values of the land and natural resources, which do not always conform with the values of land implicit in the current laws. In many countries, legislation establishes that communities can only receive land titles if they are previously registered as juridical persons through administrative procedures that are too long, cumbersome, and expensive, and there processes end up excluding these communities from the systematic registration program.

Regarding the implementation of systematic first registration programs (see section 7), the communications and engagement efforts require inquiring and understanding the views and aspirations of indigenous peoples and communities concerning their land, for which state organizations face language, cultural and social barriers. In many cases, a long history of spoliation and dispossession, and/or environmental damage to their habitats, has produced
the additional challenge of restoring trust and respect to assure meaningful participation by the communities and their organizations.

What can be done to deal with this issue?\textsuperscript{16}

Regarding the recognition of rights, it is necessary to identify whether there are international obligations related to indigenous and other communities with customary tenure rights (such as the international conventions ILO 169, or the International Covenant on Civil and Political Rights), and if the laws and regulations regarding first registration comply with the international obligations and the national constitution. A comprehensive and detailed analysis identifying the different types of land tenure and use would identify areas in which legal reform is required, and there would need to be consultation on such changes with all sectors of society with the free, previous and informed consent of indigenous peoples and their organizations. Coordination of legal frameworks and policies with other land administration agencies such as environmental authorities and resource management agencies is critical.

Regarding the design of programs, the rules should consider the use of non-documentary mechanisms to demonstrate tenure rights, respecting the diversity of customary uses (both exclusive and shared) and recognizing legal pluralism. The program should also incorporate traditional dispute resolution mechanisms and recognition of existing and legitimate customary structures.

Regarding the implementation of systematic first registration programs, the communications and engagement strategy should pay special attention to making all materials accessible in local languages. It also needs to take into account the needs and practices of local communities about the adequate time for discussions, reflections and formulation of responses. A unit specialized in indigenous people’s communications, able to create capacities within the other operational units (legal, technical) could be considered. The use of local networks and organizational structures for data gathering and social monitoring may facilitate the work. The strengthening of these customary structures, especially to sensitize them on the importance of, and respect towards, women’s and other vulnerable groups rights, are crucial to ensure efficiency and sustainability.

Checklist

\begin{itemize}
\item Identify what international obligations related to indigenous and other communities with customary tenure rights are relevant.
\item Perform a detailed analysis identifying the different types of land tenure and use to identify areas in which legal reform is required.
\item Consult on such changes with all sectors of society with the free, previous and informed consent of indigenous peoples and their organizations.
\end{itemize}

\textsuperscript{16} See Annex 1 for additional resources on this issue.
- Coordinate of legal frameworks and policies with other land management agencies.

- Incorporate traditional dispute resolution mechanisms and recognition of existing and legitimate customary structures.

- Ensure specialized communications for these communications with all materials accessible in local languages.

- Create a unit specialized in indigenous people’s communications.

**Part 4  Legal Issues**

There are numerous legal issues that arise during a first registration program, particularly when investigating ownership documents. The following covers only a small number of legal issues that are relevant to first registration. For a discussion of a wider range of legal issues relating to the governance of tenure, see the FAO publication *Responsible Governance of Tenure and the Law, A guide for lawyers and other legal service providers*.

**15. Constitutional concerns**

What is this issue about?

This issue concerns the doctrine of separation of powers, which is a foundation of many constitutions around the world, and its relevance to first registration programs.

The doctrine of separation of powers is commonly established or applied through an express statement in a country’s constitution that the powers of the legislature, executive (administration) and judiciary are separate, but it can also be implied by the structure of the constitution, with separate parts or chapters dealing with each of the three arms of government. The main consequence of the separation of powers is that an attempt by one arm of government to exercise the powers of another arm will be regarded as invalid and ineffective.

As first registration of title is a function of investigating, determining and recognizing rights, it has been characterized as a judicial function in many parts of the world, and thus only the judiciary can conduct it. But in practice the executive arm of government often conducts first registration of title to make it quicker and cheaper. Thus a conflict potentially arises as to the validity of the executive arm of government conducting title registration. This issue applies to both the systematic and sporadic means of first registration.

Why does this issue matter for first registration?

17 [http://www.fao.org/3/a-i5449e.pdf](http://www.fao.org/3/a-i5449e.pdf)
This issue is central to the question of who should be responsible for first registration and whether the executive arm of government can validly implement a program. It is also very important for operational and financing purposes because characterizing first registration as a judicial process, rather than an administrative one, would mean that all applications for first registration would have to be considered by a judge in a duly constituted court – either an existing court or, more likely, one created specifically for the purpose of first registration. This would not only change the approach to first registration normally employed but it would impose higher costs both in terms of time and money, and it could eliminate some of the procedural safeguards that are part of the systematic registration process, such as the public display.

This is not simply a theoretical concern. As attempts to introduce title registration in various states of the United States of America in the 19th and 20th centuries show, special interest groups can successfully challenge title registration conducted by the executive arm of government on constitutional grounds (that is, the executive’s actions were in breach of the doctrine of separation of powers), with the result that the program becomes uneconomical and fails.

What are the causes of this issue?

As noted, the basis of the issue lies with the doctrine of separation of powers (which cannot be easily altered due to its fundamental basis in the constitutions of many countries) and the nature of first registration activities – whether they are judicial or administrative in nature. The issue arises because the executive arm of government is often best placed to carry out a registration program.

What can be done to deal with this issue?

At the very start, a legal review needs to establish what the constitution provides. Presumably, it will have adopted the separation of powers doctrine either expressly or by means of the constitution’s structure because most written constitutions use the separation of powers as a starting point.\textsuperscript{18}

If so, the law regulating first registration needs to make it clear that the process is one of declaring the existing situation, rather than adjudicating on rights or boundaries, and that the newly created records merely reflect the existing situation in a new form. The powers of officials under the law would also need to be expressed in a similar way. Further, the law needs to make clear that any disputes between parties are to be referred to the judicial arm of government for resolution (after the appropriate dispute resolution processes have been followed – see section 3).

Otherwise, there is nothing that a law regulating first registration or a government agency implementing first registration can do to alter such a fundamental constitutional matter as

\textsuperscript{18} If the separation of powers doctrine does not apply, then the problem discussed here does not arise.
the separation of powers. The situation must be accepted and the risk of a challenge kept in mind.

Assuming that a challenge were made, presumably by an interest group opposed to title registration, then the registration authority would need to mount a defence of the law and the process of first registration. That defence would highlight the administrative nature of first registration, the mere acceptance of existing documentation and other facts, and the transference of the current situation into the registry. It would need to be stressed that officials are not exercising discretion or deciding between competing rights. Rather, it would be stressed, only clear cases would be registered and contentious issues would be referred to the courts, as would any other dispute between parties.

Were a challenge to the registration law to prove successful, such that the executive arm could no longer conduct all aspects of first registration, then it would be necessary to rethink the first registration process. It might be necessary to establish a process through an existing court or perhaps a newly created land court that would be dedicated to handling the hundreds or thousands of cases that are typically involved in a first registration program. A hybrid approach, in which the executive arm prepares cases that are then formalized by the judiciary, could also be considered. Resources, including trained staff, would need to be assigned to the court, and a streamlined process developed, such as one in which non-judicial staff investigate and prepare draft determinations that a judge can simply review and endorse. The cost of all this would need to be assessed and balanced against the benefits of first registration to the community.

The failure of title registration in the United States of America can be directly attributed to the cost and complexity of the judicial process that is required to register property, and it is also proof that a risk exists in any country that has a constitution based on the doctrine of separation of powers. Another illustration of the risk comes from Sri Lanka where, in the early 2000s, the Law Society planned to challenge the Registration of Title Act on constitutional grounds, which would have dramatically changed the registration process had they been successful. While no challenge was brought because the registration program did not proceed for other reasons, the threat and consequences of a challenge were taken very seriously.

Checklist

✓ Determine whether the separation of powers doctrine has been adopted in the constitution, either expressly or by means of the constitution’s structure.

✓ Draft the law regulating title registration in such a way that it characterizes the first registration process as one of declaration rather than determination, and that contentious matters are to be referred to the courts.

✓ In any challenge, stress the administrative nature of the process and the role of the judiciary in dealing with disputes.
✔ If a challenge were successful, develop court-based methods that draw on the efficiencies of systematic registration to reduce the cost of the program. Ensure that adequate numbers of administrative and technical staff are available to support the judges, who would formalize draft determinations made by the non-judicial staff.

16. Legislative basis

What is this issue about?

This issue concerns the need for an adequate legal basis to permit first registration to occur and to ensure that all the necessary powers and protections are included in the law. This issue, too, applies to both the systematic and sporadic means of first registration.

Why does this issue matter for first registration?

Without a solid legal basis, a variety of risks can arise, such as:

- the process and its decisions could be seen as not being legitimate because they are not legally sanctioned or authorized;
- the process and its decisions could be challenged in court as beyond or inconsistent with what is authorized;
- officials might be unwilling to make decisions without legal backing;
- variations in practice are likely to develop, and the way is open for undue influence or corruption because discretion would need to be used to implement the process;
- existing rights could be lost or diminished through poorly defined processes, lack of checks and balances, and lack of possibilities for appeal;
- many cases might not be registered because existing laws might only cover formal ownership, and therefore fail to deal with cases such as ownership by long-term possession (see section 1).

Negative consequences could follow. For example, the first registration program could completely fail or it could fail to benefit the whole community, and resources could be wasted as a result and the credibility of the program and the institution responsible could be damaged.

Thus, ensuring that there is a robust, complete legal foundation for the systematic registration program is important if it is to be effective, nationally consistent and efficient, if corruption opportunities are to be minimized, if it is to be accepted by the community, and if all property holders are to benefit and be protected.

What are the causes of this issue?

It is uncommon for a first registration program to have no legal basis, as there are generally laws on property rights, ownership, transactions, inheritance and other aspects of tenure. However, these laws generally fall short when it comes to the process of first registration,
particularly in regard to clearly defining the processes, rights and responsibilities of both officials and owners. So reliance on the existing legal framework as a sufficient basis to conduct first registration can often give rise to problems.

In terms of providing an adequate legal basis, once a decision is made to have a law that covers first registration, there can still be problems in establishing an adequate legislative basis due to lack of experience in both the practical and legal aspects of the process, or underestimating the magnitude of issues, such as dealing with ownership by means of long-term possession. Without practical experience in first registration, particularly the systematic registration process, it is difficult to know which issues will need to be addressed in the law and how they will need to be addressed. Further, even with some experience, the knowledge of how to best deal with the issue might also be missing. Copying laws from elsewhere might help somewhat, but as each country has its own circumstances and needs, no foreign law would be exactly appropriate.

Failure to identify inconsistencies and conflicts, and also gaps, in the legal framework can also give rise to problems. A failure to carry out an overall review and assessment of the existing laws, from a first registration perspective, and then take the necessary remedial action, can commonly cause problems when implementation commences.

What can be done to deal with this issue?

There are several actions that need to be taken to ensure that the legal framework is adequate to commence first registration activities.

Firstly, an overview of all the laws that are relevant to land should be produced. It does not need to be detailed, but should locate and consider all relevant provisions across the constitution, various codes, implementing laws and regulations. The overview should establish the existing powers, rights, etc. that are useful, the provisions that are missing, any overlaps (particularly in authority or responsibility), and the provisions that run counter to good practice in first registration (if any). A set of essential and also non-essential changes can then be formulated, with essential changes being introduced before first registration work commences.

For all the steps discussed here, foreign technical assistance can be greatly beneficial, particularly in countries with no experience of first registration programs. Study tours, too, can be helpful.

Secondly, a solid legal basis for the activities of first registration should be established, which would require either a new law or amendments to the existing law. At a minimum, the law should cover:

- appointment of officials to conduct first registration;
- powers of officials to consider documents and other evidence to confirm ownership;
- the main steps and stages in the process, such as declaring an area subject to first registration, public awareness, fieldwork investigation, determination and public
display, appeals, final conclusion and completion of the process, with the results transferred into the registry’s records;

- power to consider non-documentary evidence and to make conclusions regarding long-term possession, including possession for periods that are shorter than the limitation period;
- provisions that protect and promote the rights of women, minorities and members of vulnerable groups;
- details on how to deal with transactions that occur while first registration is underway (instead of prohibiting any transactions), including changes of ownership due to inheritance;
- adequate appeal provisions, using an ascending order of complexity and cost, such as the first level of objection being a simple internal review, then a more formal administrative review and finally a judicial review (see section 3);
- power to issue regulations, instructions and a practical manual to deal with the details of the matters covered in the law.

Interestingly, and perhaps surprisingly, two matters of deep concern to lawyers are often not relevant or do not have a negative impact on first registration programs. These are the effect of registration (what benefit does registration provide?) and the closely connected issue of the clarity and security of land tenure rights being registered (are the people’s rights freehold, use right, usufruct right, etc.?). Although a very serious concern to lawyers and those involved in securing tenure rights for people, these issues can often be put to one side (at least at first) during first registration, primarily because they do not have an impact on the process itself. For example, vaguely defined use rights are just as capable of being registered as freehold ownership. These issues should, however, be on the medium term agenda in a successful land registration program to ensure that there is adequate clarity and tenure security for the owners and those who deal with them.

Thirdly, there needs to be implementation materials, such as regulations and instructions. These, too, should be prepared before registration work commences, and staff provided with appropriate training (see section 10).

Checklist

- Carry out a review of all relevant laws and identify which provisions need to be changed to support a first registration program.
- Use technical assistance to help conduct the review, draft legislation and prepare implementation materials.
- Ensure that all key matters are addressed in the law regulating first registration, including powers of officials, the key steps in the processes, dispute resolution mechanisms, etc.
- Prepare implementation materials and provide training to staff in their use before the registration program begins.
17. Legal aspects of area

What is this issue about?

Problems relating to the legal consequences of locating and measuring boundaries can occupy a disproportionate amount of time and effort to understand, develop solutions and negotiate acceptance of changes (including to the law). There are many such issues, but the problem of discrepancies in measurements of area is one that commonly arises, along with the related question of how to deal with shortages and, to a lesser degree, excesses. Others include discrepancies in dimensions, informal subdivisions (particularly arising through inheritance), access to land locked parcels, informal servitudes and encroachments. Disputes between neighbors over boundaries can also be a significant problem, and will often require officials to make a decision that can be appealed against (see section 3). The following discussion will, however, focus only on the area issue.

Why does this issue matter for first registration?

Problems with boundaries and area are important to address because disputes or dissatisfaction regarding area can threaten the validity of fieldwork results, including through appeals and even legal challenges to the first registration process itself (see section 15). If the problem is widespread, the public’s confidence in the entire systematic registration program can be threatened by a failure to address it. Likewise, a failure to deal with area problems means that time and funds spent on registration can be wasted, and people can miss out on the benefits of registration. Where the system guarantees areas (in a very small number of countries), then problems with area could lead to claims for compensation that could have a major negative impact on government finances and even the financial viability of the registration system.

What are the causes of this issue?

There are multiple causes to the problems with measurements and areas, depending on the history, customs, level of technology, legal framework and standards of the surveying profession. Also, differences in the purpose of the surveys would have an impact, as some surveys were conducted with other objectives in mind and therefore adopted a different approach. Another common cause of the problem of discrepancies between declared areas and measured areas is tax avoidance, with former owners understating the area of their land so that they would pay less tax. Further, legal documents will often refer to a specific area although this might never have been correct, yet once the numbers are written, they take on a life of their own. Alternatively, stated areas might have once been correct but no longer reflect the actual situation due to changes in the physical world over the years that were never incorporated in legal documents, such as re-alignments and subdivisions.

What can be done to deal with this issue?
Investigate the situation. Each country will have different problems, so it is important to conduct an investigation prior to rolling out a systematic registration program to identify the main types of cases that will arise (if any) and consider how to deal with the problems well in advance. An assessment of the legal framework should also be conducted to see if, and how, the laws deal with shortages and excesses of area.

Provide clear legislative response to issues. Once the nature of the problem and its causes are identified, technical and legal specialists can develop workable solutions. It is likely that a legal basis for the solutions would be needed, so legislation should be drafted and adopted. For example, one solution that has been incorporated in the law elsewhere is the concept of permissible discrepancies, which allows certain discrepancies in area to be regarded as within acceptable limits and for no action to be necessary or permitted. Alternatively, the law could make it clear that the measured area prevails, and that areas stated in documents are indicative only. Importantly, any implied or express guarantee as to area should be removed from the law, with a statement (if necessary) to the effect that dimensions and areas as shown are indicative only.

Clarify the status of information and include disclaimers in the records. While area is an important element of a survey and very useful for private and public sector users, the status of this information should be clearly specified. Based on the text of the law, diagrams and other records should carry a disclaimer making it clear that the statement of area is not absolute. Where the system has a history of recording areas in deeds, that area should not be reproduced in the register. But where it is decided that the area in the deed must be recorded and displayed, then it should be clear that it is historical information only.

Adopt a holistic approach to problems, including redistribution through quasi-judicial or judicial processes. In formulating solutions, particularly in locations where discrepancies in area are endemic (such as a result of poor land allocation processes), then the option of a reconfiguration of the boundaries should be considered. This would normally require a scheme to be developed, considered by a judge, and then confirmed by a court order because some form of redistribution or expropriation would be necessary. A detailed legislative basis would be required, as would a good public relations program.

Educate the public, professionals and officials. Work on educating the public and others that parcel areas are approximate only, and that surveyed dimensions and areas will change with time. As noted immediately above, a statement on diagrams and maps to this effect is a good first step in the process. As some countries calculate the sale price of property on the basis of an amount multiplied by area (such as a $x per square meter), advising owners that the area of their property is lower than they thought can be a difficult public relations exercise, so it needs to be well thought out and owners need to be given a long period of warning. Professionals can play an important role in educating their clients, so working closely with notaries, lawyers, surveyors, real estate agents and others involved in the land sector would be helpful. Similarly, land registry staff need to be educated so that they can explain the situation to the public.

Checklist
✓ Carry out an investigation into the possible problems with area, and assess how the law deals with such problems.

✓ Develop workable solutions and provide a legal basis for them if necessary, and eliminate any guarantee as to area that might exist in the law.

✓ Do not reproduce old areas as shown in deeds, but if it is necessary to do so, then include a disclaimer that such information has only historic relevance.

✓ Take a holistic approach to resolving the problems, particularly where they occur consistently, such as reconfiguration of all boundaries.

✓ Educate the public, professionals and staff on the issues and solutions well in advance of introducing changes.

Conclusions

While much can go wrong with systematic registration, as this paper shows, there are many actions that can be taken to avoid or minimize the adverse impacts. The design and preparation stage is, perhaps, the most important time to address these potential problems and take actions in accordance with best practice. That phase needs to focus not just on the processes, but also the legal framework, instructions and forms, preparation of training materials and courses, and design of the communications and engagement program. Spending a substantial amount of time designing and preparing the program might make it appear that the fieldwork will never commence, but the time spent is an investment and will permit the fieldwork to progress more quickly and with less risk than would otherwise be the case. Experience has shown that ill prepared programs not only fail but they use up the goodwill and enthusiasm that are essential for the success of a mass campaign, such as systematic registration, making the possibilities of registering all the properties in a second attempt more remote.

This paper has also noted the importance of overseeing implementation to ensure that the field staff follow the design, while also allowing for the program to develop and evolve in light of first-hand experience. Systematic registration programs can take many years to complete, so it is to be expected that they will change over time, and therefore a flexible approach to implementation is required.

As many countries have found, it is possible to successfully conduct systematic registration programs and for the country to benefit as a result. This paper will, hopefully, contribute to the success of future programs by drawing on the lessons to be learned from both the successes and failings of other programs.
Annex 1: Indigenous Peoples with Customary Tenure Systems
Guidelines and references

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