



Registering agricultural land

María Heredia, a farmer in Spain's Andalusian province of Almería, has a one-hectare greenhouse in which she grows high-end "raf" tomatoes. Her grandparents were landless peasants in the nearby province of Granada at the turn of the 20th century; they moved to Almería because of a land reform and colonization program that provided them with farmland. One of the least developed parts of Spain at the time, Almería now boasts one of the highest levels of income per capita among Andalucía's provinces. Its smallholders have invested in their land to become market leaders in vegetable production—growing peppers, squash, tomatoes, zucchini and other vegetables in the hundreds of greenhouses they have built since the 1960s. The province ships fresh produce to markets across Europe. The land reform that allowed smallholders to register their rights to farmland is perceived to be one of the critical factors in the development of this successful agriculture-based economy.¹

Farmers seeking to enter the commercial market need secure access² to specific plots of land,³ whether the access is long term (through individual or collective freehold property rights,⁴ customary rights⁵ or long-term leases⁶) or for a predetermined period (through medium- and short-term leases⁷). The guarantee of access or tenure security⁸ provides incentives to invest in land to make it more productive, such as by adding irrigation systems.⁹ Tenure security also creates incentives to provide good stewardship of natural resources that are essential to sustain farming. And tenure security serves as a form of collateral, which most banks require for lending to farmers.¹⁰

Many studies have shown the importance of secure land and property rights for farmers. The World Bank's *World Development Report 2008*:

Agriculture for Development illustrates their importance using an example of female farmers in Africa. With insecure property rights, the female farmers tend to produce less than their asset base could otherwise support because they fear that if they are more productive, men in the community would probably take control of their land. If the women had secure land tenure, it is estimated that their crop yields would increase by as much as 20–30%.¹¹

As noted by the Food and Agriculture Organization's *Voluntary Guidelines on the Responsible Governance of Tenure*, a key first step in achieving tenure security is the recognition of legitimate statutory and customary land rights in the national legal framework.¹² Evidence shows that development does not happen without legality.¹³ The Rights and

Resources Initiative, a coalition of organizations working on land and forest policy reforms, further develops this idea by making the case that countries need to recognize legitimate property rights to drive economic development such as that experienced by Brazil, China, or the Asian tigers. Where economic systems are driven by resource extraction and commodity exports, the economy may be more vulnerable to external shocks and nations may experience a higher incidence of poverty, inequality, political instability, and internal conflict. This is the case in Liberia, where the government has given out up to two-thirds of the country's land as concessions for large-scale agriculture for export commodities such as rubber and timber, according to some accounts.¹⁴ However, this does not have to be the outcome if there are institutions encouraging transparency and supporting inclusive sustainable development such as in Switzerland, where legitimate individual and collective rights coexist in rural areas.

A second step toward tenure security is providing people with the ability to register or record their land rights once they have been recognized in the national legal framework.¹⁵ Along these lines, the FAO's *Voluntary Guidelines on the Responsible Governance of Tenure* recommend that "States should strive to ensure that everyone is able to record their tenure rights."¹⁶ The perceived value of these rights can change at any time, such as when there are large-scale land acquisitions for agriculture or when agricultural land is eyed for a different use, such as for a dam or mine or for urban expansion. When these changes occur, the ability to formally register legitimate land rights becomes critical to secure the livelihoods of farmers.

A recent World Bank study of the effects of large-scale land acquisitions for agriculture in developing countries found that laws and policies surrounding land acquisition were often

ambiguous, incomplete or contradictory.¹⁷ The implementation of the legal and policy frameworks appeared to be inconsistent, often hurting those who were already vulnerable—especially those using land that was not demarcated or registered or those whose resource rights were unregistered. Similar findings are reported by other studies of large-scale land acquisitions in developing countries.¹⁸

The ability to register land rights is a key enabling factor not only for farmers wishing to grow into the commercial sector, but also for those wanting to exit agriculture. In urbanizing countries, farmers seeking to expand will want to buy or lease land rights from others who are looking to exit farming. Without accurate and reliable property rights information, these land transactions will be slower or even blocked in the formal sector, and land markets will be unable to fulfill their function of allocating land efficiently.¹⁹ In today's economies, land registries are usually best equipped to provide this information (box 3.1).²⁰

What registering agricultural land data measure

Registering agricultural land data measure regulatory constraints in land registration or in recordation processes as well as limitations in registration or in recordation institutions that affect the security of tenure that the legal system offers. The data focus on registration or recordation institutions because these are the most efficient instruments known today for securing land rights and for providing accurate and relatively low-cost information on these rights.²¹

Data are collected in 5 topic areas, as follows:

1. *First-time registrations of private land for individuals*: These data assess whether

due process is followed during first-time registrations of freehold rights on agricultural land in countries with private ownership.

2. *Procedures, time and cost for first-time registrations of private land for individuals:* These data measure the number of procedures, time, and cost that it takes to register a plot of agricultural land for the first time at the land registry in one of the main agricultural areas of the country. See the Data notes for the details of the case study that is measured.
3. *First-time registrations of leases of public land for individuals:* These data assess whether due process is followed during first-time registrations of state-owned land that is given out to individuals on a leasehold or concession basis.
4. *First-time registrations of land for communities:* These data assess whether due process is followed during first-time registrations of customary rights.
5. *Land registry and registered land rights:* These data examine whether the land registry follows practices in its legal design that enable the registry to provide legal certainty to individuals and institutions wanting to make use of the registry's information when engaging in property transactions to reduce risk and avoid or minimize land conflicts. Covered practices can include: the registry's ability to certify the information in its records; whether the registry provides compensation for mistakes in the information it certifies, when this erroneous information leads to losses to transacting parties; and whether the registry and the courts link their information on the status

of land rights and rights-holders. Other issues that are explored include how registrars are selected and the mechanisms used to guarantee the integrity of the registry's records.

For the first 4 topic areas dealing with first-time registration, specific due process issues that are analyzed include the following:

- Whether neighbors and other parties with potential interests and rights over the land subject to the application are informed of the first-time registration application;
- Whether affected parties can voice their concerns with the first-time registration application; and
- Whether affected parties can appeal the decision to proceed with the first-time registration, if they disagree.

What the initial pilot results show

Who may register land rights, and how, are critical issues that a land registry needs to decide from the outset. The answers to these questions will determine farmers' access (or lack of access) to the institution that usually provides the strongest legal protection of land rights. The system for access needs to be flexible enough to allow the registration of rights that have not been previously documented, while providing the necessary safeguards to guarantee that only the people with rights to the land in question are allowed to register those rights.

Three scenarios—with commonalities and differences across countries

Through the registering agricultural land data, *Enabling the Business of Agriculture* analyzes

BOX 3.1: What is the role of a land registry—and why is it so important?

In theory, the secure property rights needed to support investment or trade in land could be achieved through either formal or informal systems.^a But informal property rights systems can be efficient only when the parties involved in a land transaction know each other or when they both know a third party whom they trust to ensure their compliance. Today, where most transactions take place between parties who do not know each other, countries need formal systems to establish the necessary trust.

Institutions that provide secure and verifiable property rights play an essential role in economic development. As one study argues, “People prosper when investors feel secure and are therefore willing to invest in productive activities. But they prosper even more if they can trade beyond their personal circles of known people.”^b Secure property rights that can be transacted in a reasonable time frame form the basis for low-cost functioning of both land and financial markets.

Secure property rights and speed in secondary transactions are best achieved through formal institutions such as land registries^c or registries of deeds^d when these institutions offer the right incentives to landowners and parties to land transactions.^e Among the main incentives they offer is their ability to reduce transaction costs for contracting parties by identifying the registered property owner. It is no surprise that all 10 pilot countries have a land registry or registry of deeds where land rights can be registered or recorded.

Once such an institution is established, critical questions become which rights to recognize and register or record, and what strength to give these rights once they are registered. Other important issues in designing a land registration or recordation system include determining what guarantees are given to registered or recorded transactions, and establishing an organizational structure that can deliver quality registration services.

a. The definition of a formal system that is used in this chapter is a legally and socially accepted system that provides for the registration of recognized and legitimate land rights in writing in a systematic way. The definition of an informal system that is used in this chapter is a legally and socially accepted system that has no systematic written records.

b. Arruñada 2012, 15.

c. This chapter defines a title registry as a land registry that records changes in holders of rights or title to a specific plot of land. This means that the registry is able to provide conclusive information on title owners. Please see the chapter on registering property in *Doing Business 2012* for a more detailed discussion on this topic.

d. This chapter defines a registry of deeds as a land registry that records the transfer of deeds. These registries do not provide conclusive information on title owners. Please see the chapter on registering property in *Doing Business 2012* for a more detailed discussion on this topic.

e. Arruñada 2012, 58. FAO 2013c.

3 different scenarios in which a farmer or farming community could request the registration of rights for a plot of land for which there has been no prior registration of land rights, as follows:

- Scenario 1: A farmer or a farmer and his or her family have farmed a plot of land for more than 30 years²² but have never registered their individual rights to the land.
- Scenario 2: A farmer seeks to obtain the right to use a plot of agricultural land that belongs to the public sector.
- Scenario 3: A farming community seeks to register collective rights to a plot of land that has been collectively used by the community according to customary practices.

Scenario 1: First-time registrations of private land

All 10 pilot countries allow the first-time registration of private land by individual citizens who have been using the land informally and in good faith for years—and all have regulations in place to process applications for these registrations. Traditionally, this mechanism has allowed access to the registry for land plots on a case-by-case basis. Reasons for seeking first-time registration could include an irrigation investment that makes agricultural land more valuable, the need for a mortgage that requires the registration of land before it can be given as collateral, or a large-scale project that could result in the expropriation of the land from the

farmer. Cases such as these can be seen in most of the pilot countries.

In Rwanda, for example, the authorities decided that it would be best to undertake a systematic process to register all land in the country. All land has been mapped within the past decade and has been or is in the process of being titled (box 3.2).

The application process for first-time registrations is more burdensome in some countries than in others. In Nepal, an initial step that requires the government's consent usually blocks the entire process. In Mozambique, a farmer must complete 10 procedures when seeking to register the land that he or she has been using

BOX 3.2: Getting to scale in Rwanda

In Rwanda, land fragmentation was typically a disincentive for the agricultural economy, as multiple plots of land were used in an inefficient manner and various crops were grown on a minimal scale. Thus, the need to achieve economies of scale so as to increase the output of specific crops, the productivity of farmers, and the overall competitiveness for the product in question, led to a land policy that promotes the implementation of the consolidation of land use.

The Ministry of Agriculture and Animal Resources (MINAGRI) and the Rwanda Agricultural Development Authority (RADA) undertook land use consolidation to facilitate greater agricultural yields and to promote the efficient and sustainable use of land resources, while still maintaining the rights of smallholder farmers. Under the land consolidation policy, farmers in an area maintain their individual land rights to their specific plots of land, but they consolidate the use of their land by planting the same crop, thereby increasing output and productivity. The land consolidation policy is aimed at enabling and encouraging greater economies of scale, with regards to seeds, fertilizers, and mechanization services, as well as at allowing opportunities for integrated solutions for transport and storage of agricultural goods once they are harvested.

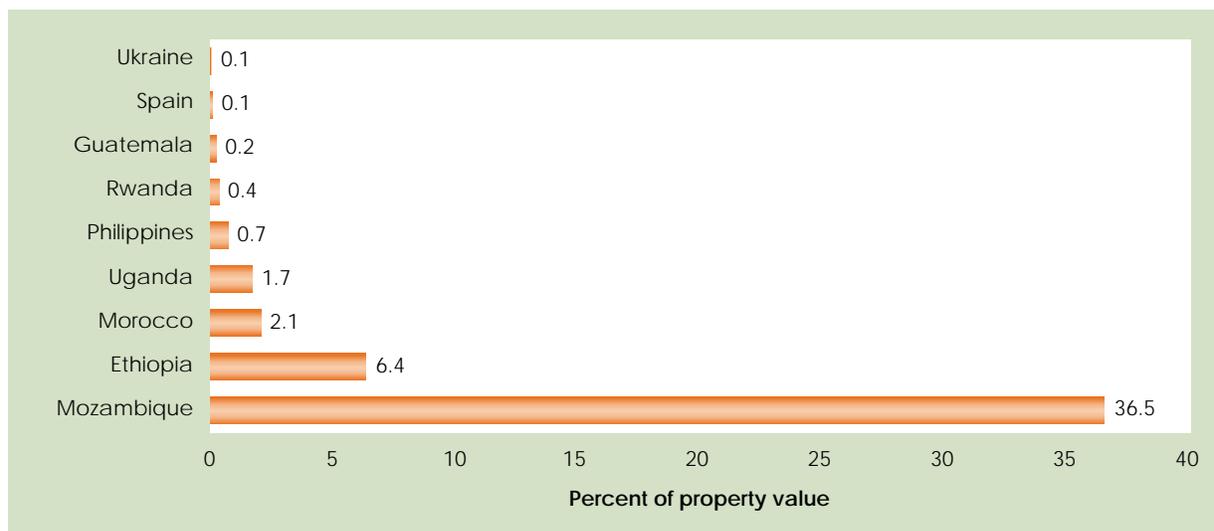
As land use consolidation is difficult to achieve if clear property rights have not been formed, the registration of all agricultural land in Rwanda aims to underpin this policy. The completed reform process of land registration was executed with the support of the World Bank and DFID, and included far-reaching legal and institutional reforms, including modifying both the Constitution and the Inheritance Law, and passing the 2004 Land Policy and the 2005 Organic Land Law. The ensuing program of land tenure regularization based on these pieces of legislation included the recording of all legitimate informal rights and issuance of new titles.

informally and in good faith; the process takes over a year and costs 36.5% of the property value.²³ So in Mozambique not just the length of the registration process but also the cost can be obstacles to registering land. In Ukraine, by comparison, the process takes 7 procedures

and 150 days and costs just 0.1% of the property value (figures 3.1, 3.2).

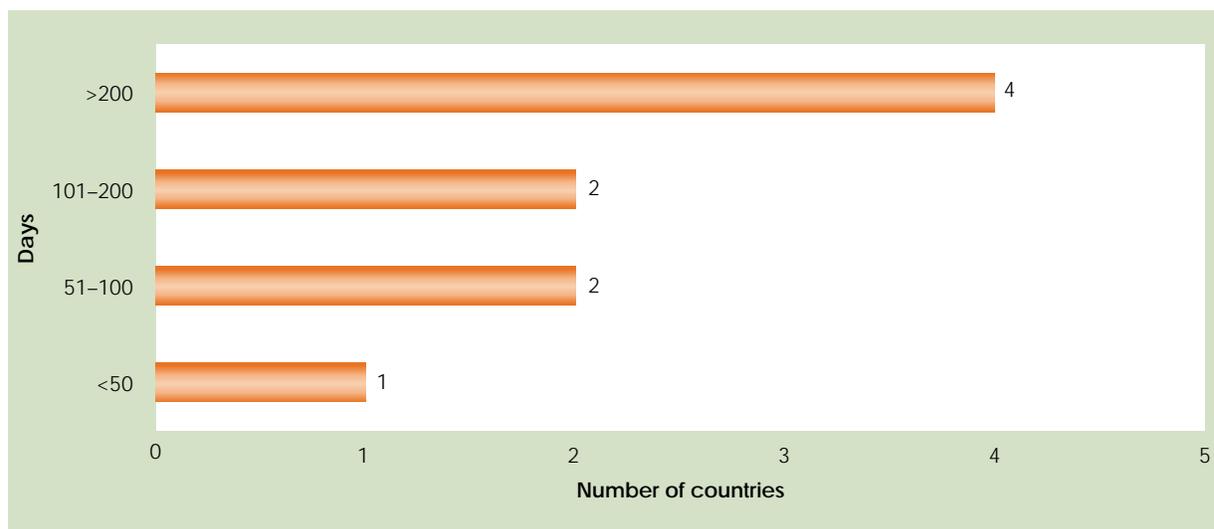
In a majority of the pilot countries, including Guatemala, Mozambique, Spain and Uganda, the relevant authorities make the registration

FIGURE 3.1: Total cost of first-time registrations is less than 2% of the property value in the majority of pilot countries



Source: *Enabling the Business of Agriculture* database.
 Note: Nepal is not included as it is a no practice country.

FIGURE 3.2: Total time to complete first-time registrations of land is equal or less than 200 days in half of the pilot countries



Source: *Enabling the Business of Agriculture* database.
 Note: Nepal is not included as it is a no practice country.

application public, ensuring that neighbors and other interested parties can be informed about the application. Countries that make the application public²⁴ also include a public hearing in the registration process, allowing consultation of interested parties on the applicant's property claim. Once a decision is made to approve the application and the name of the applicant is made public, they allow all affected parties to appeal the decision.

Scenario 2: First-time registrations of leases of public land for individual use

All the pilot countries allow individual citizens to register for use rights of public land, but the process tends to differ from that used for first-time registrations of private land. In particular, the safeguards of the process differ. While the process for registrations of privately-owned land typically includes informing and consulting neighbors and other interested parties about the application, the process for publicly-owned land involves less consultation of other parties who could be affected. In Spain, for example, the process does not include consulting third parties.

Scenario 3: First-time registrations of land for communal use

All the pilot countries except Nepal, Rwanda and Ukraine allow the registration of collective customary rights to land (box 3.3). But the legal structure required for the community and the type of legal rights given to the community differ across countries. In Spain, for example, collective community land rights are given to the municipality and the land is considered public land. In Guatemala, the land assigned for community use is currently also public land, but it is assigned in the form of a concession that includes certain performance requirements. Guatemala is now working on registering

community rights on private land for the first time. In Mozambique, all land belongs to the state, and the community is given a collective use right.

Land rights are inheritable – but do not necessarily include the land's natural resources

The bundle of land rights that are recognized in a country's legal and regulatory system can include the right to: transfer the rights by sale or inheritance; lease the rights to a third party; mortgage the property; the soil and the subsoil; and any other natural resources on the property. Whether farmers have these rights matters, because these rights create incentives—and their lack of availability disincentives—to invest in farmland.

Registered rights to a plot of land can be inherited in all the pilot countries. But land rights do not necessarily include the right to the subsoil. They do not include this right in Guatemala and Nepal, for example. In Mozambique and Spain, land rights include the subsoil, but they do not include any other natural resources that might be on the property or the subsoil, such as mines or water aquifers; these are considered public property. In addition, in Ukraine, registered rights to a plot of land can be inherited and do include the subsoil, as stated in the Subsoil Code of Ukraine. However, to use certain types of mineral resources, a special permit is required, of which the individual may not concede or sell.

The spectrum of coordination among land registries, mapping agencies, and mining institutions

Land rights can be registered in one institution or in multiple institutions. In most countries the same land registry covers both urban and rural areas. But not all land registries coordinate their

BOX 3.3: The importance of delimiting land

Dr. Elinor Ostrom, winner of a Nobel Prize in Economics, noted that communities that have successfully managed collective resources over a long period all share some things in common.^a One commonality is clearly defined boundaries for the communal property.

In many countries, however, the boundaries of communal property and public lands have not been defined and registered. It is assumed that communities know where the boundaries are. But when the land suddenly increases in value, the lack of delimitation poses a risk of encroachment on public land.

This situation happened in Spain in the 1960s, when tourism started to develop at an unprecedented pace in coastal areas. Rural coastal properties suddenly became very valuable. Under Spanish law, certain coastal areas are public land. But in the absence of clear registered boundaries, public land was encroached on by private individuals and developed for tourism.

To avoid a similar outcome, the Navarra region in northern Spain is working to register public land, especially public land that is communally owned. This development is especially important in Navarra, where 42% of the land is still held collectively by rural communities. Why is there a high percentage of communally-owned land in Navarra? Property rights reforms that occurred in Spain in the 1800s, which transformed land held by rural communities into private property, were not extended to the region.

Interestingly, National Institute of Statistics of Spain data show that Navarra is also among the Spanish regions with the highest standards of living and lowest income inequality. Of course, a high standard of living and communal land complement each other only when the necessary conditions are in place. The allocation of land parcels must be aligned with a strategy that advocates for the protection of natural resources.

a. Ostrom 1990.

information with other registries, such as the registry of mines, or with forest or conservation concessions. Only in Spain and Ukraine does the land registry, in providing information about a plot of land, also include information about the existence of mines or other concessions on the property. Knowing this information is important; in Mozambique, for example, the right to a mine extinguishes the right to the surface land.

All the pilot countries have a cadastre or surveying authority, but they vary in whether this institution uses the same identification number for land parcels as the land registry does. In Guatemala and Ukraine, for example, the land registry and cadastre maintain different

identification numbers for each parcel. In Uganda, by contrast, the land registry and cadastre use the same identification number. And in Spain the land registry includes the cadastre's identification number in its records for each parcel, in an effort to coordinate their databases.

The relationship between erroneous land information and monetary compensation

The ultimate goal of a land registry is to provide the most accurate information possible on land rights. This information undergirds not only the real estate market, but also the financial market and the overall economy. The greatest legal

TABLE 3.1: Where land registries provide compensation in the event of errors

Country	Does the law provide for compensation to parties who engage in a good faith transaction and incur losses due to erroneous information certified by the land registry?
Ethiopia	No
Guatemala	No
Morocco	No
Mozambique	No
Nepal	No
Philippines	Yes
Rwanda	No
Spain	Yes
Uganda	No
Ukraine	Yes

Source: *Enabling the Business of Agriculture* database.

security is provided by registries that are able to certify their information and that compensate parties that incur losses as a result of errors in registry-certified information (table 3.1).

In Spain and Ukraine, compensation is generally made available to parties that have incurred a loss as a result of engaging in good faith transactions that rely on registry-certified information that is later proved to be wrong. In Guatemala, Mozambique and Nepal, however, registries do not provide compensation in these cases.

Next steps

This chapter presented the initial results for a data set that measured policy and regulatory

constraints and good practices in registering agricultural land that can impact the agricultural sector. After analyzing the data collection results, the team narrowed the focus to 30 data points by identifying those that were relevant, measurable and collectable. While this data set will be narrowed down to cover the most critical issues in the topic area during the upcoming year, after further consultations, additional measurements may be considered. Some measurements that could be developed include, but are not limited to, the following areas:

1. The issues of access to registered rights and the security provided by registration services have proved to be critical in all countries. The process followed for first-time registrations has also been a conflict resolution and prevention mechanism. For the next data collection round, issues that will be addressed in building registering agricultural land indicators include developing lists of procedures for first-time registrations of customary land to complement the current procedure list of first-time registrations of individual land rights.
2. The pilot results underscore the importance of the land registry structure and its coordination with other institutions in determining the reliability of the information that it provides on land rights. With this experience, the team will be refining the language used in the legal questions that examine the registry structure so that they are understandable in all countries.

Notes

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- 1 Rivera Menéndez 2000.
- 2 Land access in this chapter is understood as physical possession of the land plot. The term access does not refer to World Bank land redistribution projects for landless peasants.
- 3 Rights and Resources Initiative 2013.
- 4 The definition of freehold used in this chapter is ownership of property for life with the right to pass it on through inheritance. This right can be given to an individual or to a community, in which case the freehold right would be of an individual or collective nature, respectively.
- 5 The definition of customary rights used in this chapter refers to the land tenure norms used by a given community, which are based on their history and customs, and may or may not be recognized by a written and official legal instrument.
- 6 A lease is a contract whereby the owner of a plot of land cedes the right to use the land and benefit of its proceeds to another party in exchange for a payment. The definition of long-term lease used in this chapter is that of leases of over 10 years.
- 7 The definition of medium-term lease used in this chapter is for leases of 5 to 9 years. A short-term lease is considered to be from 1 to 4 years.
- 8 The definition of tenure security used in this chapter is a relationship to the land that is legitimate according to the national legal framework, socially accepted, and enforceable for a pre-established period of time that is known by all parties and stakeholders.
- 9 FAO 2012b; FAO 2013c; Yoo and Steckel 2010; World Bank 2007; Deininger 2003.
- 10 Prosterman et al. 2009.
- 11 Durand-Lasserve and Selod 2007.
- 12 FAO 2013c.
- 13 De Soto 2013, 13.
- 14 Rights and Resources Initiative 2013.
- 15 FAO 2013c.
- 16 FAO 2013c, par. 17.3.
- 17 Deininger et al. 2011; World Bank and United Nations Conference for Trade and Development 2014; Lawry et al. 2014.
- 18 For example, Cotula and others (2009), and Arezki, Deininger and Selod (2011).
- 19 Arruñada 2012; Durand-Lasserve and Selod 2007.
- 20 FAO 2013c.
- 21 Arruñada 2012.
- 22 Thirty years was included as a reference point because it was the highest minimum required time among the pilot countries that allowed for adverse possession.
- 23 For specific assumptions used to calculate these figures, please refer to the Data notes.
- 24 By public, this paragraph is referring to notices that are put up in public areas relevant to the location where the plot of land is situated. This process usually takes the form of public notices on the local government bulletin board or in the institution where the first-time registration process is taking place, for example, at the court building in the case of a court proceeding. In some countries, public notices are placed in official gazettes or newspapers.