

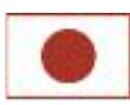


A TOOLKIT

Systematic Property Registration: Risks and Remedies



THE WORLD BANK
IBRD • IDA



The Government of Japan

This document identifies a variety of specific problems that can be encountered during a systematic registration of property program, and lists actions that could be taken at the design and preparation stage as well as the implementation stage to deal with them. It provides a summary of the actions that are described in more detail in a longer paper, which also looks at the causes and consequences of these problems. The objective is to highlight practical and often simple measures that can be adopted to better achieve the aims of systematic registration.

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. The following pages seek to expand on several of the provisions in that document, particularly general principles number 1 and 3, the ten implementation principles, and section 17 of the VGGT on recording of tenure rights.



PART I: DESIGN

1. Lack of documents establishing rights

This issue concerns the problems of missing documents, informal documents and lack of any documents. It is a common problem that can result in many people missing out on registration unless appropriate measures are put in place.

- 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 overcome 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 warnings on the title after their occupation has passed the statutory limitation period.

2. Taxes

This issue concerns the barrier to participating in systematic registration that can arise when various types of back taxes are revealed during investigation, and the consequential reduction in the number of people who can be registered unless remedial steps are taken.

- Negotiate 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 title registration.

3. Dispute resolution mechanisms

This issue concerns the important role that objections and appeals play in systematic registration as quality control and safeguard mechanisms, and the negative impact on the quality of results that a failure to provide adequately for dispute resolution as a part of the process can produce.

- 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 decision can be reached, and then to deal with appeals through a more formal judicial or quasi-judicial process.
- Provide training to staff in dealing with objections.
- Prepare and public widely 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

This issue concerns the buildings that are encountered during first registration that do not have full and legal documentation regarding their construction, and how a failure to resolve that issue prior to registration can greatly detract from the outcomes of the program.

- Conduct a desk review into the situation of illegal buildings before deciding on 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 illegal buildings problem.
- Develop and adopt legislation to implement workable solutions.
- Create teams from local municipalities to work in parallel with the systematic registration teams to resolve informal building problems 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

This issue concerns the benefits of first registration going primarily to the wealthy members of society, and the corresponding reduction in benefits for the poor, who can see the greatest benefits from first registration in terms of improved livelihood.

- Explicitly include fair and equal distribution of the benefits of the program to all segments of society, and identify the poor as particular beneficiaries.
- Work with local communities and NGOs to understand the full picture.
- Assess the impact of first registration on the poor, including improved access to credit for agricultural inputs.
- Implement the first registration program in a range of areas across the country that cover both the wealthy and poor.

6. Subsequent registration system

This issue concerns the failure to provide an accessible, affordable system to register transactions with land following the first registration program, and the consequential loss of benefits and waste of resources caused by a failure to do so.

- 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, educate owners on the need to register transactions, and develop the registry into a customer-focused, professional organization.

PART 2: IMPLEMENTATION

7. Communications and engagement

This issue concerns the measures that are required to ensure that the public are actively involved in the systematic registration process, without which the results will be less accurate and fewer properties will be registered.

- Understand the need for a well designed and implemented communications and public 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 public 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 public 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

This issue concerns the phase of the systematic registration process in which the results are published and checked by the community, and the risk that a poorly implemented public display could have on the quality of results.

- 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 field work 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 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 undue influence

This issue concerns the various forms of corruption and undue influence that can emerge during systematic registration, and the risks that a failure to address them can have on public participation and confidence in the program's outcome.

- Establish a clear legal basis and issue clear instructions that minimize the extent to which discretion is used.
- 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 occur or go un-noticed.
- Recruit staff from outside the area in which first registration is being conducted who have no ties to local politicians, officials or people.
- 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, which not only provides a good backup for the data, but also makes it very difficult to tamper with documents or "lose" them.
- Ensure that the objection, appeal and redress mechanisms function adequately, and establish a reporting system covering the numbers 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 national anti-corruption agency, if one exists.

10. Staff instructions and training

This issue concerns the practical guidance and training that staff require before they commence work, and the risks involved in staff operating without proper guidance or training, which can result in inefficiencies, inaccuracies and variations in practice across the country.

- 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 field work.

PART 3: OWNERS

11. Failure to capture all rights and holders

This issue concerns various problems encountered during the field work and investigation phase of systematic registration in identifying all rights and all right holders, and the resulting inaccuracies and even loss of rights that a failure in these tasks can produce.

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 field staff to inspect the properties and specify their entitlement to enter properties in the law, 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 banks to ensure that mortgages are identified;
- Oblige field 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 process;
- Train field 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;



- Ensure that the objectives phase runs efficiently.

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

12. State land

This issue concerns firstly, the need to have representatives of the state actively involved in the systematic registration program to both protect the state's interests and to provide useful data, and secondly, the need for the state to be involved in regularizing long-term occupation of its land that are revealed during the process, and without which many people can be placed at risk.

- 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 field work in each locality, engage with local level officials and municipalities.
- Where no body 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 to systematic registration where possible. Otherwise, make a record of occupations of state land that permit formalization to occur subsequently.

13. Women, minorities and children

This issue concerns the barriers faced by women, and also members of minorities and children, to taking part in a systematic registration program so that they can protect their rights, and the actions that are required to ensure that everyone in the community can benefit from the program, even if that requires additional steps to overcome the barriers to participation.

- 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 law 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.

PART 4: LEGAL

14. Constitution concerns

This issue concerns the doctrine of the separation of powers, under which the executive arm of government cannot make judicial determinations, and the risk that a first registration program implemented by an agency of the executive will be characterized as a judicial process, which would make it unlawful and lead to an alternative approach that could have significantly higher costs.

- 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.

15. Legislative basis

This issue concerns the legal foundation for conducting registration work and the powers and safeguards that need to be provided in the law, and the consequences that a failure to provide a clear, complete legal basis can have on registration programs.

- Carry out a review of all relevant laws and identify which provisions need to be changed to support a first registration of title program.
- Use foreign 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.

16. Legal aspects of boundaries

This issue concerns one of many legal issues concerning boundaries, and looks at problems with variations in area between documents and surveys, which can cause serious problems and disputes, and how a failure to address this problem can impede the completion and acceptance of the results of a first registration program.

- Carry out an investigation in 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 officials on the issues and solutions well in advance of introducing changes.



The toolkit was prepared by a World Bank team with support from the Government of Japan through the Policy and Human Resources Development Technical Assistance Program (PHRD), as part of a broader initiative to disseminate the Voluntary Guidelines in collaboration with the FAO.

