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Organization of the
United Nations

Guidelines on strengthening gender equality in land registration

Southeast Europe
2021



GIZ and FAO. 2021. Guidelines on Strengthening Gender Equality in Land Registration – Southeast Europe 2021. Rome. <https://doi.org/10.4060/cb2857en>

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ISBN 978-92-5-133846-9 [FAO]
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This work is a co-publication of
Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH on behalf of the German Federal Ministry
for Economic Cooperation and Development (BMZ)
and The Food and Agriculture Organization of the United Nations

ACKNOWLEDGMENTS

The Guidelines on Strengthening Gender Equality in Land Registration Southeast Europe were prepared with contributions by Nikolaus Schall, Land Management Consultant, Eva-Maria Unger, Kadaster International – The Netherlands, Naomi Kenney, FAO, Romyana Tonchovska, FAO, Margret Vidar, FAO, Vladimir Evtimov, FAO, Maxim Gorgan, FAOREU, Dono Abdurazakova, FAOREU, Veronika Efremova, GIZ, Jana Schuhmann, GIZ, Margreet Goelema, GIZ, Adela Llatja, GIZ, Rezarta Veizaj, GIZ, Paula Dijkstra, Kadaster International – The Netherlands, Elke Matthaei, GIZ, Joana Qeleshi, Judge in Albania, Meliha Powlakić, Professor of Civil Law in Bosnia and Herzegovina, Mirna Rakić Domazetović, Attorney at law in Serbia, Joy Bailey, HM Land Registry for England & Wales, and Amie Figueiredo, UN Economic Commission for Europe (UNECE).

The Guidelines were edited by PIK sh.p.k
The design was prepared by PIK sh.p.k

PREFACE

Women's economic empowerment is essential in promoting equality between women and men and it is a precondition for sustainable development. It can be achieved through equal access to and control over economic resources and opportunities and the elimination of structural gender inequalities. De jure access to land in Southeast Europe (SEE) for women and men is regulated by the formal legal system that grants gender equality in access to land. In practice, however, women's land rights are often set aside, overlooked or given insufficient protection and enforcement. Gender equality is one of the 10 main principles of implementation from the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT).

“Gender equality: Ensure the equal right of women and men to the enjoyment of all human rights, while acknowledging differences between women and men and taking specific measures aimed at accelerating de facto equality when necessary. States should ensure that women and girls have equal tenure rights and access to land, fisheries and forests independent of their civil and marital status.” (VGGT, Section 3B Principles of Implementation, point 4) Property registration authorities play a key role in achieving gender equality in land ownership and control. The Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH on behalf of the German Federal Ministry for Economic Cooperation and Development and the Food and Agriculture Organization of the United Nations (FAO), together with other development partners, have been supporting governments in SEE countries in strengthening gender equality in land ownership and control towards achieving the SDGs target 5.a.

Institutions in SEE countries have carried out several reforms with a significant impact on women's land rights. In most SEE countries, the joint registration of land owned by married couples is now compulsory or encouraged through economic incentives. Some of these countries have introduced registration of joint immovable property on behalf of both spouses free of charge. The average percentage of registered properties with female owners or co-owners at the national level has increased in a majority of SEE countries in the period from 2013 to 2019, ranging from 16 percent to 27 percent in North Macedonia, 26 percent to 38 percent in Bosnia and Herzegovina, 25 percent to 32 percent in Montenegro, and 31 percent to 35 percent in Serbia (FAO and GIZ, 2019). Property registration authorities in SEE are committed to further improving gender equality in land ownership and control.

These Guidelines build upon the VGGT, the Technical Guide on Governing Land for Women and Men, the Technical Guide on Creating a System to Record Tenure Rights and First Registration and the Technical Guide on Improving Ways to Record Tenure Rights and aim to inform registration offices on and raise awareness of gender equality issues in relation to the registration of property rights. This document draws attention to some key aspects of strengthening gender equality in land registration in general and provides practical tips for registration offices to consider implementing. It also provides an overview of good practices in the region and information about existing national legislation and policies in SEE that can be used by other countries and regions worldwide. This will contribute to the enforcement of property rights and initiate a cultural change.

The development of these Guidelines was motivated by a desire to further improve the situation of women when it comes to land and property registration in SEE. Our deep gratitude goes to all who gave their valuable contributions.

We sincerely hope that these Guidelines will facilitate the task of those who work with land registration in SEE and beyond.

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INTRODUCTION



1. INTRODUCTION

Over the last five decades, legal frameworks in Southeast Europe have made huge advances in strengthening gender equality in land ownership and control. The right of ownership and freedom from discrimination on all grounds are constitutionally guaranteed, while waves of legal reforms have paved the way for eliminating gender-based discrimination and provided legal safeguards for women's land rights within the contexts of marriage, cohabitation and inheritance (FAO and GIZ, 2019). To ensure that these rights to land are accurately recorded and protected, land registration systems should identify and address the barriers that women face in securing their rights. In this regard, several steps are needed. First, the national legal and administrative instruments that govern land administration and land registration should ensure that there are no disincentives to the registration of rights over marital property. They should also allow for the correction of existing data when legally established rights to co-ownership have not been secured through registration. National legal and administrative instruments should also ensure that staff at registration offices have the knowledge and skills necessary to contribute to the elimination of discriminatory traditional social practices in their handling of applications. Second, collaboration between land registration offices and providers of legal services on land matters should be encouraged in order to ensure that gender issues are identified and addressed at various stages in the land registration process, from the authentication of documents by notaries in countries that require it to court proceedings in contentious cases.

A key issue in this context is the protection of lawful property right-holders whose rights are recognized by the law but are undisclosed (not registered) in land registries. Although the legal frameworks in Southeast Europe grant legal protection to the property rights of wives, female partners and daughters, in practice these do not translate into joint registration or link to a higher rate of property registered in women's names. Inheritance is traditionally regulated through the male line of descent, and data from the region show that properties are overwhelmingly registered in the sole name of a husband, male partner, son or brother (FAO and GIZ, 2019). Real property that spouses acquire during marriage, for example, is still all too often registered in the name of the husband. The wife's interests can be lost to a third party who acquires the property from her husband or to (male) heirs in the inheritance process if she is widowed. Among other factors, the implementation gap between the law (*de jure*) and actual practice (*de facto*) can lead to a serious breach of constitutionally guaranteed rights such as ownership rights and freedom from discrimination (FAO and GIZ, 2019).

The present Guidelines form part of a joint effort by the Food and Agriculture Organization of the United Nations (FAO) and the Deutsche Gesellschaft für internationale Zusammenarbeit (GIZ) to help countries achieve indicator 5.a.2 of Target 5.a in the 2030 Agenda for Sustainable Development adopted by the United Nations in 2015¹. Target 5.a is to “Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance, and natural resources in accordance with national laws” and is measured by two indicators:

- Indicator 5.a.1: (a) Percentage of people with ownership or secure rights over agricultural

1. It also supports the implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT).

land (out of total agricultural population), by sex; and (b) share of women among owners or rights-bearers of agricultural land, by type of tenure.

- Indicator 5.a.2: Proportion of countries where the legal framework (including customary law) guarantees women’s equal rights to land ownership and/or control.

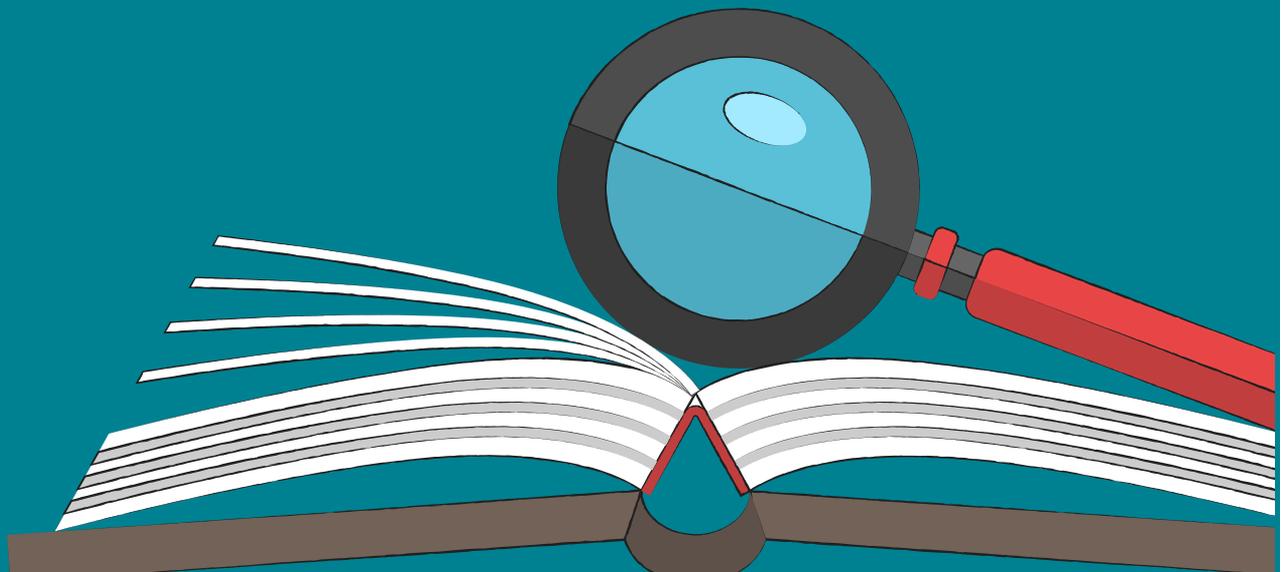
The inclusion of Indicator 5.a.2 acknowledges that greater equality in the ownership and control over land contributes to economic efficiency and has positive multiplier effects on achieving a range of other SDGs including poverty reduction (Goal 1), food security (Goal 2) and the welfare of households, communities and countries (Goals 3, 11 and 16, among others).

These Guidelines build on several years of collaboration between FAO, GIZ and the International Union of Notaries (UINL) which has resulted in the publication of Guidelines on strengthening gender equality in notarial practices in Southeast Europe. This collaboration has highlighted the need for cooperation between notaries and registration offices (Llatja *et al.*, 2018) and the role of notaries in strengthening gender equality in property rights (Kenney *et al.*, 2019). It highlights some of the key considerations for strengthening gender equality in land registration in Southeast Europe (Albania, Bosnia and Herzegovina, Serbia, North Macedonia, Montenegro and Kosovo*) and some of the lessons learnt from the cooperation between land registration offices and notaries in the region.

* This designation is without prejudice to positions on status and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo Declaration of Independence.



KEY DEFINITIONS



2. KEY DEFINITIONS

Bona fide: “A bona fide purchaser is one who purchases property for a valuable consideration that is inducement for entering into a contract and without suspicion of being defrauded or deceived by the seller. He or she has no notice of any defects of the title. A bona fide purchaser pays in good faith full value for the property and, without any fraud, goes into possession.”³

Cohabitation: A situation where an unmarried couple (not married in accordance with the marriage law of the country) lives together in an intimate relationship. It may also refer to relationships that are recognized by the state but that are not considered a marriage—for instance a civil partnership and a de facto relationship that is registered with the state. The term “unmarried couples” is often used interchangeably with “de facto unions” and “consensual unions”. Members of an unmarried couple are referred to as “partners”. The law may grant specific rights, obligations and protections to partners when the cohabitation meets certain requirements.

Consent: The requirement that the other spouse or partner (in an unmarried couple) agrees to a land transaction prior to the land transaction taking place.

Deceased’s spouse’s estate: The legal rights, interests and entitlements to property of any kind (not only land) that the deceased spouse or partner enjoyed at the time of death, less any liabilities. Depending on the legal system, marital property may be excluded fully from the calculation of the deceased’s estate, or the deceased’s 50% share in the marital property may be included.

Family home: The house that is or has been the main residence of the family. This can be property registered in the name of one or both spouses and may or may not constitute marital/joint property. In legal and policy frameworks, this term is frequently used interchangeably with “family residence” or “matrimonial home”.

Inheritance: Property passing at the owner’s death to the heir or those entitled to succeed.

Jointly owned property: Property that is collectively owned by a married or unmarried couple. In some cases, this may be ownership as an undivided share (known as tenancy by entirety, joint tenancy or common ownership), in other cases this may be ownership divided by specific shares (known as tenancy in common or co-ownership by proportion) or a variation of the two.

Joint registration: Where the names of both spouses—or both partners in an unmarried couple—are entered into the land registry as the owners or principal users of the land being registered. Joint registration signifies a form of shared tenure over the land—usually either a joint tenancy/occupancy or a tenancy in common. In legal systems that include a framework for land titling, joint registration is commonly referred to as “joint titling”.

Transaction: A change to the ownership or the rights associated with land, usually involving the owner and another person, such as a transfer of rights from one person to another, a lease of the property or a mortgage of the property.

3. Definition from West’s Encyclopedia of American Law (2nd edition) (2008), <https://legal-dictionary.thefreedictionary.com/Bona+Fide>, accessed on 6 July 2020.

Marital property: Property jointly owned by spouses following their marriage. The content of this property will depend on the marital property regime applying to the marriage. The term is sometimes used interchangeably with “matrimonial property”. In legislation, marital property can be referred to using the umbrella terms “common”, “community” or “joint” property or “joint estate”.

Marital property regime: The regime of property ownership between spouses providing for the creation or absence of a marital estate, and if created, what properties are included in that estate, how and by whom it is managed, and how it will be divided and inherited at the end of the marriage. The term can be used interchangeably with “matrimonial regimes” or “marital property systems”.

Marriage/Married couples: Couples recognized as being validly married under the marriage law(s) of the country being assessed. Although requirements for a valid marriage vary between legal systems, in many legal systems they require the government to preside over the marriage ceremony, for the marriage to be conducted at a particular location or for certain documents to be signed.

Principle of legality: The principle of legality is a cornerstone of criminal justice systems across Europe. It is codified in international instruments, e.g. Article 7 ECHR and Article 22 of the Rome Statute of the International Criminal Court, national constitutions and criminal codes, such as Article 1 GCC, Article 16 of the Dutch Constitution. The essence of this principle is that no person can be punished for an act that is not criminalised by law, in other words, “there is no crime without law” (Peristeridou, 2015).

Property: all immovable property—for instance a house, the land upon which the house is built and land that is used for other purposes, such as agricultural production. It also encompasses any other permanent structures built on the land. Legal frameworks commonly use the terms “immovable property” or “real property” when referring to land.

LEGAL BACKGROUND



3. LEGAL BACKGROUND

In most legal frameworks in Southeast Europe, property acquired during a marital union and cohabitation is considered jointly owned property. Property acquired throughout the duration of a consensual/non-marital union is considered co-ownership or joint ownership in Bosnia and Herzegovina, Montenegro, Serbia and North Macedonia. Spousal consent is mandatory for any transaction involving matrimonial property. Spouses manage and dispose of matrimonial property jointly and consensually in Albania, North Macedonia, Montenegro and Serbia (FAO and GIZ, 2019). While the rights-holders are protected under the law through recognition of ownership rights, titles are not always registered in the names of both parties (spouses or partners) in the land register. Although land registration law in Albania and Serbia requires mandatory registration of both spouses as co-owners/joint owners of matrimonial property (FAO and GIZ, 2019), some legal frameworks in other countries provide or used to provide an opportunity for registering property in the name of only one owner as an exception to the general rule for joint registration.

An incomplete or outdated register creates legal uncertainty for both spouses/partners, as the spouse/partner who is not involved in the process will acquire rights over real property under the law, but such rights will not be reflected and confirmed through registration, while the other spouse/partner (as the sole contracting party) might not be aware that his/her ownership right over the property is in fact shared with his/her spouse/partner. Since the assets used for the purchase are joint property as well, the spouse/partner who did not declare an explicit consent to the purchase has grounds for initiating litigation proceedings.

In Southeast Europe, inheritance is traditionally regulated through the male line of descent and so widows and daughters are particularly at risk of being pressured or led to believe that real property should be passed down to their sons or brothers, and registered accordingly (FAO and GIZ, 2019). In North Macedonia, Serbia and Montenegro, for example, the surviving spouse is granted user right of the family home for life (right of life use) if the spouse is second in inheritance rank (FAO and GIZ, 2019). The conflict between old customs and the new law leaves a significant group of rights holders infringed in both real property transactions and inheritance proceedings by having their land rights recognized by the law, but undisclosed and unregistered in the land registries. This produces a chain reaction in upcoming land transactions, exposing the weaker party to legal uncertainty and leaving court proceedings as the only legal remedy for the protection of the lawful ownership right (FAO and GIZ, 2019). The unrecorded land right may be valid proof of ownership between the parties in litigation but has no effect on bona fide third-party claims until disclosed and recorded, unless such situations are identified and addressed prior to a land transaction. In all jurisdictions, land registries are considered to be true and complete under the law, as third bona fide parties need to be able to rely on the completeness and correctness of the register. As a result, the interests of an unregistered owner can be lost to a third party who acquires land from a registered owner.

The options for getting a legitimate owner registered vary from legislation to legislation, making such an amendment (registration) difficult or even impossible. In response to this

situation, Serbia has simplified the procedure for ex officio joint registration of both spouses (joint ownership), based on the marriage certificate and on a statement from both spouses for subsequent registration of the unregistered spouse for properties obtained during the marriage in Serbia (FAO and GIZ, 2019). In most countries, however, a non-registered owner is declaratively protected under the law but in practice has no rights without a court order that gives her/him the right to register in the land registry. This is one of the weakest points in the system not only in relation to female landowners, but also in relation to third bona fide parties who rely on the assumed accuracy of the public registry.

The major issues that arise from the registration of real property in the sole name of one owner, when there is more than one owner, suggest that the practice of partial registration should be entirely banned (Fig. 1) and that the correction of partial entries should be made easier (Fig. 2). Such legal reform, however, would require administrative changes, awareness raising campaigns and other measures to ensure that the introduction of the new practice does not cause unintended harm to beneficiaries. Land registration officers should be involved in the process to ensure that these reforms respond to the difficulties they encounter in their daily work.

LAND REGISTRATION



4. LAND REGISTRATION

In a majority of the legal systems in the region, an integrated registration system has been introduced as a unification of the land registry and the cadaster. A few legal systems still have a dual system of land administration based on a cadaster (governed by the cadastral units within the municipal administration) and a land registry (governed by the municipal courts). Although there are differences between the systems of registration, in all legal systems in the region registers are governed by the same or similar basic principles laid down in the legal framework. The principle of legality—specifying that certain preconditions for registration need to be met—is a basic one and a common denominator in all countries. Furthermore, the principle of truthfulness of the data is stipulated, i.e. the registration information from the registers is taken for granted in the legal system. This raises the question of the extent to which land registration officers have the right and the responsibility to establish legality in support of gender-equitable land tenure on the basis of constitutional equality principles.

4.1 The role of land registration officers

Land registries play an important role in providing information on rights and the people who hold them. Their functions support important objectives such as:

- safeguarding the legitimate tenure rights of all holders without discrimination;
- natural resource management, agricultural development (including subsidies), state land administration, spatial planning and environmental protection, taxation;
- economic and social planning and decision-making;
- the allocation of rights to public land, fisheries and forests;
- redistributive reforms, including programmes to improve the situation of groups such as the poor, women, and marginalized and vulnerable people;
- trading, mortgaging and valuation of rights; and
- dispute resolution, court proceedings, bankruptcy and criminal proceedings (FAO, 2017).

Registry staff are required to record rights that are defined in the law. They operate, therefore, within the parameters set by the law. In all the legal systems, land registration officers are public servants who register rights in land on request. Ex officio registration is either not possible or is an exception regulated by the law. Land registration officers are required to assess whether applications submitted to them are complete, i.e. based on all documents required for the process by national law. They also need to advise applicants on the importance or the legal requirement to have the property registered in both names. Notarial authentications for all or most documents are meant to ensure that these documents are truthful. The law requires the parties to be advised on all aspects of the deed, including the registration procedure, by a notary as an independent and impartial public officer of the law.

In the region, registration offices have been split between the front office (where customers come to obtain information and forms, submit applications and make payments) and the back office (where the applications are processed and where the archives are kept) (FAO, 2017). Front office staff deal directly with applicants; back office staff only handle applications. This

separation offers different challenges and opportunities for strengthening gender equality in registration practices, and any gender-responsive measure should be tailored to the specific functions that each section performs. Front office staff are in a position to communicate information to customers and to raise awareness of the importance of joint registration. Back office staff who process the information could check the personal status of the applicant and ensure that the rights of the spouse or partner are identified and entered into the registry. Office staff are not legal service providers and they do not enforce the law. However, they have a role to play in ensuring that applicants comply with the law, ranging from providing information to customers, reviewing documents, correcting data to align it with legal requirements, right up to advocacy. It is important to note, however, that registration staff operate within the boundaries set by the legal and administrative framework, and that deeper changes may only be possible through legal or administrative reform. The correction of data, for example, requires a legal ground. Similarly, staff may only be able to check the personal status of an applicant if they have access to the civil registry. This may require legal or administrative changes, in addition to the technical aspects of connecting registries.

4.2 The role of notaries

In Southeast Europe, notaries are public officials appointed by the State to confer authenticity on legal deeds and contracts contained in documents drafted by them or presented for authentication to them and to advise persons who call upon their services. These services include all judicial activities in non-contentious matters, affording legal certainty to clients. Notaries have a duty to exercise due diligence from a gender perspective in land transactions and matters of inheritance. Determining the personal status of the parties involved is a key element. Notaries are encouraged, when relevant, to determine the existence of any prior marriages of unmarried clients, to protect the rights of cohabitating partners, and to determine what regime of marital property may apply to their clients in land transactions.

In matters of inheritance, notaries are encouraged to determine the deceased's personal status, to identify, inform and invite all heirs to inheritance proceedings, to safeguard the rights and interests of statutory heirs in testate successions, to inform a surviving spouse that she/he can request the separation of their share in marital property from the deceased's estate, to inform a surviving family member that they may retain user rights over the real property, subject to the approval of all co-heirs, and to inform heirs about the consequences of relinquishing their right to inherit their share of the property (FAO and GIZ, 2019).

Even though the notary may, as a general principle, trust the parties and rely on the information presented to him/her, as a public officer of the law, she/he must verify whether the facts presented correspond with available data from the public registers available to him/her and whether they are plausible (FAO and GIZ, 2019). The registration status of the property in the land register, the name(s) that appear on the land registration document, the date of acquisition of the property, and the legal basis for prior acquisition are key documents in any proceedings. Information on personal status requires access to civil registries. In cases of

doubt, notaries have the duty to ask further questions and, if her/his doubts are not dispelled, have to take appropriate measures. In serious cases of doubt, the notary may choose to state these doubts in the act or even refuse to authenticate (FAO and GIZ, 2019).

If a notary who has exercised due diligence is involved in an application for registration (Fig. 1), public registration officers can better trust the content of the submitted deeds. This is particularly the case if the notary represents the parties in the registration procedure, i.e. submits requests and supporting documents and ensures that the registration is effected in the interest of the parties.

In order to assess the fulfilment of the prescribed preconditions, land registration officers need to compare the registered data with the submitted documents. This includes a check whether the registered person is identical to the transferor indicated in the submitted documents and whether the data on real property identified in the submitted documents is identical with the registered real property. Land registration officers are also required to check whether a transferor has given their explicit consent to transfer or encumbrance on the basis of permits or approvals, if required.

4.3 Land registration applications based on contracts authenticated by notaries

If applications are based on contracts authenticated by notaries, registration officers do not have discretionary powers to request additional documents that relate to the merits or for substantial scrutinizing or revision of the submitted public documents or to advise the applicants *ex post*. The role of registration officers in the registration of the certificate of inheritance, for example, is limited to the formal examination of this certificate or the formal examination of the declaration of relinquishment.

One of the key requirements of a land registration system is that third parties should have certainty that they can acquire land from the registered owner. Consequently, it would be inadvisable to encourage staff to refuse to register a sale by a sole registered owner to a third party after it has been notarized based on knowledge held by the land registry about the marital status of the sole owner. Collaboration between notaries and land registration is therefore essential to ensure that the information in land registries is accurate. Through collaboration, notaries can be made aware of the importance of exercising due diligence from a gender perspective in order to protect the rights and interests of all parties, while registration staff can disseminate information and engage in advocacy to effect change (FAO, 2020).

4.3 Land registration applications based on contracts not authenticated by notaries

In some countries, applications which are not authenticated by a notary can be submitted to land registration offices. As a result, registration officers need to deal with determining the interests of the parties on the basis of the documents submitted by the parties. In such cases, land registration officers should take into account the Guidelines on Strengthening Gender Equality in Notarial Practices in Southeast Europe to protect the rights of weaker parties in accordance with the constitutionally guaranteed right to ownership and freedom from discrimination on all grounds. However, the degree to which registration offices are able to actively protect the rights and interests of weaker parties is largely dependent on the powers and responsibilities conferred to them by the legal and administrative instruments that govern their operations.

Access to information on the personal status of applicants and other relevant parties requires access to civil registers (if the two are not combined) and is subject to data privacy laws. If land registration officers have access to relevant data and are in a position to provide sufficient support, due diligence needs to be defined, and if not, an administrative reform may be required. Could and should land registration officers, for example, be able to serve notice of entry to weaker parties and give applicants time to produce evidence? Given that access by land registration officers to civil registries is already a major issue, the definition of due diligence will most likely have to go hand in hand with an administrative reform that enables land registration officers to protect gender equality in property rights on the one hand but prevents misuse of power on the other.

4.4 Amendments to land registrations

As has been mentioned above, the various options for registering an unregistered owner vary from jurisdiction to jurisdiction. In general, an owner who is uncertain about her/his status, first of all needs to be able to check whether or not she/he is a registered owner. This requires public access to the name(s) of the owner(s) of the real property in question. If there is no such access, a legal and/or administrative reform is needed to remedy the situation in accordance with data privacy laws.

If an owner has determined that she/he is not a registered owner, she/he should be able to apply for joint registration of ownership right based on documentation required by the law, but without the consent of the registered owner and without a court order that gives her/him the right to register in the land registry. However, in the absence of legal provisions allowing land registration offices to operate the change, the procedure is likely to require legal or administrative reform. In Albania, the General Director of the State Cadaster Agency has issued Order No. 1150 of 2019 “On the procedure for correcting immovable property files for properties owned by spouses” which sets out the procedure for correcting immovable

property data. Land registries are authorised to correct information at the request of a spouse when the information in the land registry goes against the provisions on the registration of community property in Law 111/2018 “On the cadaster” which requires properties acquired by spouses during marriage to be registered jointly (Article 45).

Consideration should be given to whether it should be possible for a land registry official to enter an interim protective note in respect of those rights, or potential rights. For example, either (a) when the land registrar becomes aware, by whatever means, that property is or could be marital property, and (b) when an application is made by an unprotected spouse, but a decision has not yet been reached.

It may be necessary for a spouse to apply for urgent protection, for example, when a spouse or partner becomes aware that the registered spouse or partner is trying to sell or mortgage the property. It may take time for the unprotected spouse to gather the evidence needed to prove an interest in the property. If the land registrar considers that there is an arguable case that the unprotected spouse has an interest in the property, even though they have not yet been able to produce the necessary evidence, it is arguable that it should be possible to make a protective entry. This will alert a buyer or lender before it is too late for the unprotected spouse. Some jurisdictions allow for caveats, restrictions or notices in the register. Any of these might be a possible means for protecting the interest of the unregistered spouse until they have time to complete an application.

In the case of (a), notice of entry could be served on both spouses, to give them both the opportunity to confirm or otherwise that the property should be in both names.

In the case of (b), the applicant could be given a certain amount of time to produce evidence to support the application.

4.5 Due diligence

While it has been possible to define due diligence from a gender perspective exercised by notaries in the Guidelines on Strengthening Gender Equality in Notarial Practices in Southeast Europe in some detail, corresponding recommendations for land registration officers require a framework that enables them to support gender equality in property rights on the basis of clearly defined rights and responsibilities. Such a framework should be country-specific and, as mentioned, may require legal and administrative changes. The following recommendations aim to protect the weaker party (usually daughters, sisters, wives, female partners/divorcees, or widows) in applications to land registration offices resulting from inheritance or land transactions.⁴

To establish the personal status of the applicant(s), the legal and administrative framework should confer land registration offices the power to:

- ask the personal status of an applicant on the registration form;

4. These recommendations are given without prejudice to land registration officers' legal duties according to the national laws in force.

- request an excerpt from the civil registry from the applicant;
- cross-check land register with personal register.

If there are indications of the existence of owners not involved in the application, the legal and administrative framework should confer land registration offices the power to call for additional evidence and documents to ensure the legality and validity of the application.

Other considerations to protect the rights and interests of weaker parties that may require legal and administrative changes include the possibility for land registration offices to:

- serve notice of entry to the weaker party to give her/him the opportunity to intervene;
- give applicants reasonable time to produce evidence;
- make use of an interim protective note/protective entry.

Finally, to assist with the assessment of future applications, the legal and administrative framework should enable land registration offices to:

- include information on the legal deed for property acquisition, including the date of its issuing, in registrations;
- inform the public of rights and obligations of owners in regard to land registration.

While the margin for due diligence by land registration officers is limited, registration staff should be in a position to provide clear and reliable information on personal status and property status, in order to protect the weaker party. Land registry staff should therefore be able to request the submission of further information, if it is necessary to ensure the legality and validity of a transaction. The law should enable registration staff to call for additional evidence and documents and to serve notice of the application on anyone if it is deemed necessary or desirable. Additionally, staff in registration offices should consider whether registering a property in the sole name of one spouse when the law requires it to be registered in joint names constitutes a form of fraud, which could render the transaction illegal.



GOOD PRACTICES



5. GOOD PRACTICES

5.1 Transparency of land registers versus data privacy

The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) recommend that States establish appropriate and reliable recording systems—such as land registries—that provide accessible information on tenure rights and duties in order to increase tenure security and to reduce the costs and risks of transactions. Importantly, the VGGT point out that States should establish safeguards to protect the legitimate tenure rights of spouses, family members and others who are not shown as holders of tenure rights in recording systems, such as land registries. The VGGT further encourage States to ensure that information on tenure rights is easily available to all, subject to privacy restrictions. Such restrictions should not unnecessarily prevent public scrutiny to identify corrupt and illegal transactions. In addition, States and non-state actors should endeavour to prevent corruption in the recording of tenure rights by widely publicizing processes, requirements, fees and any exemptions, and deadlines for responses to service requests (CFS, 2012).

In practice, support for gender equality in land ownership and control requires data sharing at two levels. Gender-disaggregated data on owners shared in accordance with data privacy laws has proven to be an important tool for policy decisions and assessments of the need for legal and administrative changes aimed at the protection of ownership rights and the elimination of gender discrimination. Access to information on the personal status of stakeholders in the context of land transactions, inheritance or partial entries in a land register is also highly important, as is access to information on the original legal deed on which the acquisition of the property in question was based, including the date of concluding or issuing. Access to such information, however, needs to be provided in accordance with data protection laws. On the one hand, land registration needs to be based on clear and reliable information on personal status and property status, but on the other hand the privacy of owners needs to be protected and the misuse of personal data prevented. It seems advisable to make the name(s) of owners(s) and the address or description of a property publicly accessible so that unregistered owners can check their registration status, but to restrict access to information on the marital status and dates of birth of registered owners. Land registration offices have general responsibilities regarding registration, which requires them to check the applicants' personal information. Providing them access to civil registers would enable them to check the information provided, and to go a step further in the protection of the rights and interests of parties, including for the purpose of protecting gender equality (Fig. 3).

Cross-linking personal registers, land registers and land register archives for the sake of transparency would facilitate this process, but it may require legal changes together with a privacy and data protection strategy. In Albania and North Macedonia, for example, civil registers and land registers are interoperable (FAO and GIZ, 2020). The European Commission provides advice on practices to interconnect base registries across sectors and across borders (EU, 2013).

5.2 Awareness raising

In Southeast Europe, some awareness raising campaigns on the benefits of registering both spouses have been implemented but statistical data shows that this has not yet had the desired effect (see Introduction). While due diligence exercised by land registration officers in regard to individual applications needs to be assessed fully, registration offices can disseminate information (e.g. flyers, brochures, web sites) on the relevance of registration procedures to gender equitable land tenure to citizens, notaries, lawyers and staff at relevant government agencies. These activities would need to reach out both to women and men to ensure that women are sufficiently supported by their families, if they wish to act on the information provided. In the Republic of North Macedonia, for example, notaries and the Agency for Real Estate Cadastre organize open days for providing free legal and professional assistance to citizens (EU, 2013).

5.3 Access to services

Access to the services of land registration offices plays an important part in gender equality in land ownership and control. Land registration fees applied incrementally on the basis of the number of owners who register, for example, act as a disincentive. Serbia has improved access to the services of land registration offices by introducing an incentive tax (costing a token fee of EUR 3) if spouses/partners register as co-owners of a property. Serbia has also established mobile registration service centres to improve access to property registration services for women, the poor and vulnerable groups in Serbia (FAO and GIZ, 2020).

5.4 Gender equality strategies

More generally, strategies that aim to strengthen gender equality in property rights can include the use of special measures in the form of quotas to ensure that women are represented in land administration. Such measures can encourage women to make use of these services as well as help overcome gender stereotypes in relation to land ownership. Trainings can also equip staff with a better understanding of the specific challenges that wives, partners and daughters may face in securing their property and the consequences for gender equality. They can also empower registration staff in their interactions with male applicants, particularly when it comes to communicating the benefits of joint registration for spouses or partners. As such, the registry or its contractor should:

- carry out awareness raising and training with officials and staff so that they understand the barriers that women face, the special steps that are required, and how they can overcome those barriers;
- ensure that procedures include steps to protect the rights of all, that there is room on forms to record all holders (not just the head of household) and that matrimonial parcels are recorded in the names of both spouses;

- ensure gender balance in the staff;
- develop and deliver information sessions for women and men and ensure that women are targeted in any communications activities and publications;
- set up a help line to provide free legal advice to women and vulnerable rights holders;
- take into account the restricted time available to women and facilitate access to services through the provision of mobile services and dedicated hours (FAO, 2017).

Land registration offices also have a role to play in the dissemination of information. The publication of guides in language that is accessible can help users understand the benefits of joint registration and become aware of any incentives that are available to them.

5.5 Establishment of professional bodies and development of a code of conduct and ethical standards

Professional associations at the national and international level are crucial for fostering social identity at the professional level, the development of professional ethics, standards and codes of conduct, as well as for the exchange of information and close cooperation with other relevant professional bodies, in particular chambers of notaries, associations of judges and bar associations. A regional network across Southeast Europe that encourages cooperation between land registration officers and academics specialised in land registration law, for example, could lead to a sound and uniform interpretation and implementation of national laws that could benefit gender equality.

The property registration and cadaster authorities in the region actively participate in the UNECE Working Party on Land Administration (WPLA), an intergovernmental group of policymakers and experts. The WPLA promotes tenure security and creates more effective land registries, as well as sustainable land policies. It provides a neutral platform for knowledge-sharing and discussion between governments and other land stakeholders, developing good practice in land registration, land consolidation and informal settlement management.

Land registries in Southeast Europe are members of Eurogeographics, as are National Mapping, Cadastre and Land Registry Authorities in Europe. Eurogeographics provides a range of products and services⁵ and expertise which supports navigation, emergency response, a reliable and secure land and property market and many more government and business decisions and services. Land registration officers in Southeast Europe can also join the International Federation of Surveyors (FIG). In Bulgaria, land registration officers are recognized as magistrates (i.e. judges) and in some European Countries, competencies of law (enforcement) officers (Rechtspfleger in German) in non-contentious jurisdiction include land register law (EU, 2008). Internal Guidelines for harmonised practice such as the Green Paper for European Rechtspfleger (EU, 2008) can provide some guidance but their international union⁶ does not fill the role of an international association of land registration officers comparable to the role of UINL in regard to notaries.

5. Eurogeographics, <https://eurogeographics.org/our-members/>, accessed 13 July 2020.

6. EU Rechtspfleger/Greffier, <https://eur-online.eu/en/>, accessed 23 June 2020.

5.6 Life-long learning and information exchange

Issues related to gender equality in land ownership and control should form part of the professional training that land registration officers require for their qualification and should be included in life-long learning opportunities, as part of a land administration strategy. Conversely, law faculties, judicial academies or centres for the education of judges, civil servants and notaries should consider the role of land registration offices and explore opportunities for collaboration in joint research projects, pilot projects, seminars and training events to facilitate collaboration on gender equality. E-Learning could play an important role both at the national and international level. Participation at relevant conferences, workshops and seminars would enable land registration officers to share experiences and standpoints with colleagues and members of law-drafting committees. Participation in such conferences should be supported and funded, and land registration officers should keep up to date with developments in their field through, for example, online newsletters and professional networks and associations. Such measures would provide an important contribution to a uniform interpretation and implementation of relevant laws and support gender equitable land tenure.

5.7 The collection of gender-disaggregated data

The collection and dissemination of gender-disaggregated data on property transactions and registrations is essential to understanding patterns in land ownership and control and to addressing gender gaps. The VGGT recommend that, as part of broader public information sharing, records of tenure rights should be available to State agencies and local governments to improve their services. Information should be shared in accordance with national standards and should include disaggregated data on tenure rights (CFS, 2012). Such data should include the percentage of women registered in the property register under either full ownership, co-ownership, or percentage of property owned. Information on other forms of land tenure (for example use rights and control rights) should also be collected, when appropriate. In the context of Agenda 2030, the collection of gender-disaggregated data on land tenure falls under several indicators, including SDG indicator 5.a.1 on the proportion of the total agricultural population with ownership or secure rights over agricultural land, by sex; and (b) share of women among owners or rights-bearers of agricultural land, by type of tenure. Additionally, SDG indicator 1.4.2 collects information on the proportion of the total adult population with secure tenure rights to land, (a) with legally recognized documentation, and (b) who perceive their rights to land as secure, by sex and type of tenure.

Gender-disaggregated data is currently being generated by the property registration and cadaster IT systems in the region. A review of the data shows a general increase in the percentage of women registered as owners in the property registers in the period from 2013 to 2019 (FAO and GIZ, 2020).

5.8 Summary of good practices in land registration in Southeast Europe

In 2020, FAO and GIZ published a joint leaflet entitled Achieving SDG indicator 5.a.2 in the Western Balkans and beyond (FAO and GIZ, 2020). This leaflet provides an overview of collaboration with notaries and registration offices in Southeast Europe and a summary of good practices in land registration in the region. In particular:

- Gender-disaggregated data is generated from the property registration and cadaster IT systems in Southeast Europe.
- The default property regime for property acquired during a legally established consensual union (cohabitation) is co-ownership or joint ownership in Bosnia and Herzegovina, Montenegro, Serbia, North Macedonia and Kosovo*.
- The joint registration of land jointly owned by married couples is compulsory or encouraged through economic incentives in Albania, Montenegro, North Macedonia and Serbia.
- Simplified procedure for ex officio joint registration of both spouses (joint ownership), based on the marriage certificate and on the statement of both spouses for subsequent registration of unregistered spouse for properties obtained during the marriage in Serbia as of 8 June 2018.
- A reduction of the property registration fee has been introduced in Serbia through an incentive tax costing just a token fee of EUR 3, aiming to stimulate and increase women's ownership and control over land, in cases when both spouses/partners are registered as co-owners of the property and for the property registration of people with disabilities (Serbia's Law on Public Administration Taxes).
- Mobile registration service centres were established in Serbia and Bosnia and Herzegovina.
- In Albania, the Law 111/2018 "On the cadaster" makes the joint registration of marital property compulsory. It was followed by adoption of Order No. 1150 dated 3 June 2019 which sets forth the procedure for correcting immovable property files data when the corresponding portion of ownership between spouses was registered in the name of one of the spouses only.
- Notaries and the Agency for Real Estate Cadastre are organising open days for providing free legal and professional assistance to citizens in North Macedonia.
- Civil registers and Property Registers are interoperable, which facilitates inheritance procedures and transfers of ownership in Serbia, Albania and Kosovo*. This is also planned in Bosnia and Herzegovina.
- Kosovo* has adopted Administrative Instruction (GRK) No. 02/2020 for registration of joint immovable property on behalf of both spouses free of charge. The joint registration is encouraged through economic incentives in Kosovo*, since the Cadastral Agency do not apply fees for registration if both spouses request the joint registration.

* This designation is without prejudice to positions on status and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo Declaration of Independence.

ANNEX - FIGURES

Fig. 1. The role of land registration officers in gender equitable land tenure.

TO WHAT EXTENT REGISTRATION OFFICERS HAVE THE RIGHT TO ESTABLISH LEGALITY?

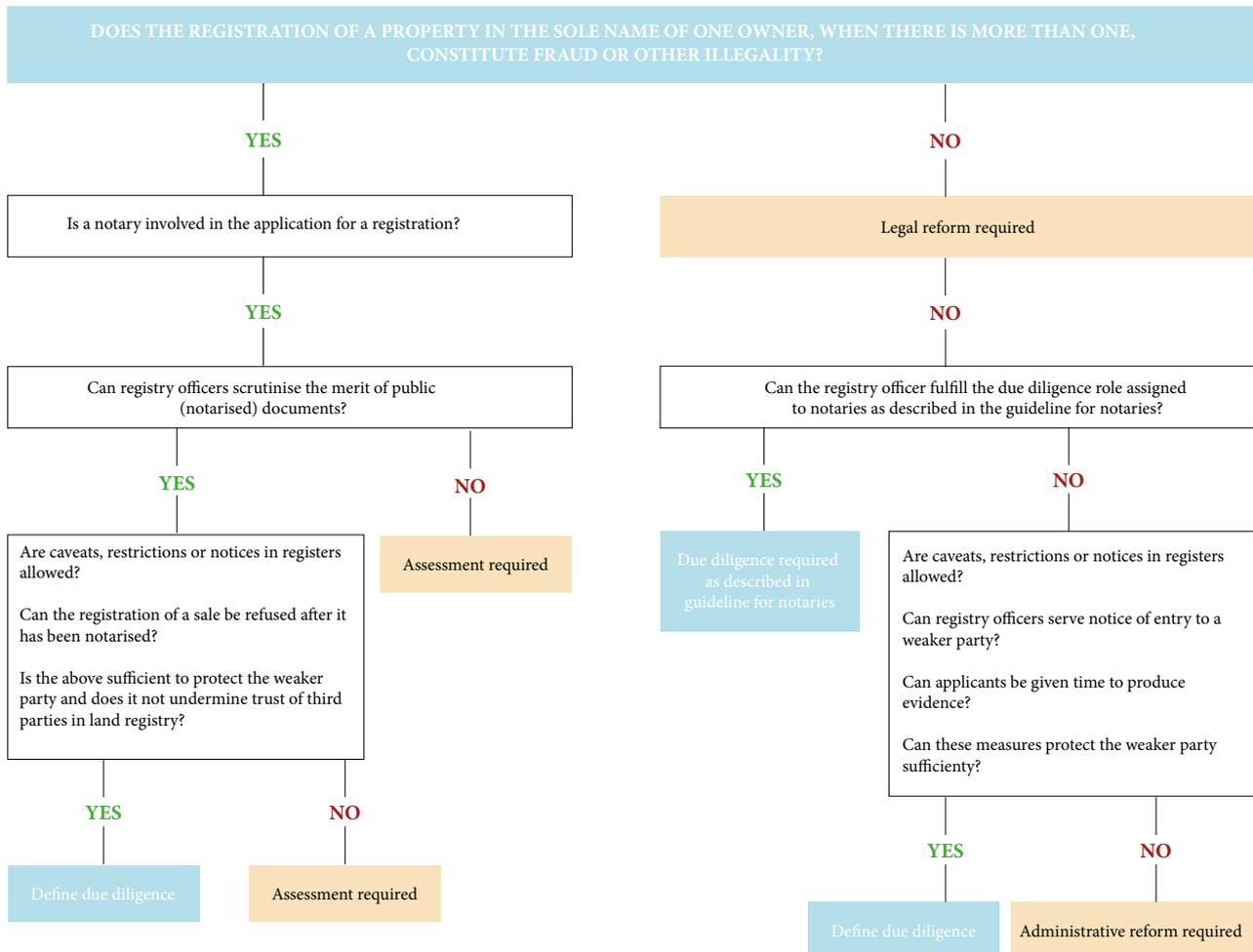


Fig. 2. Issues related to the correction of existing entries.

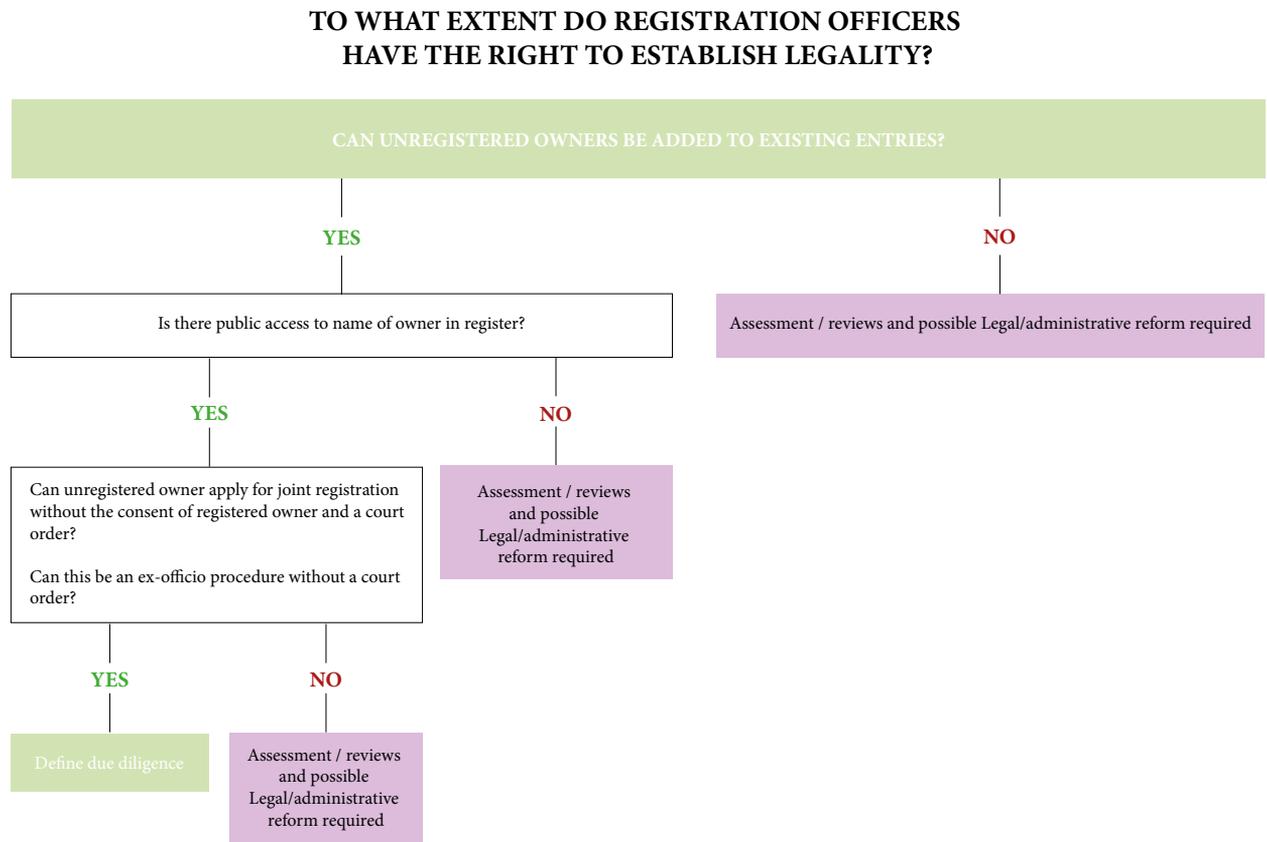
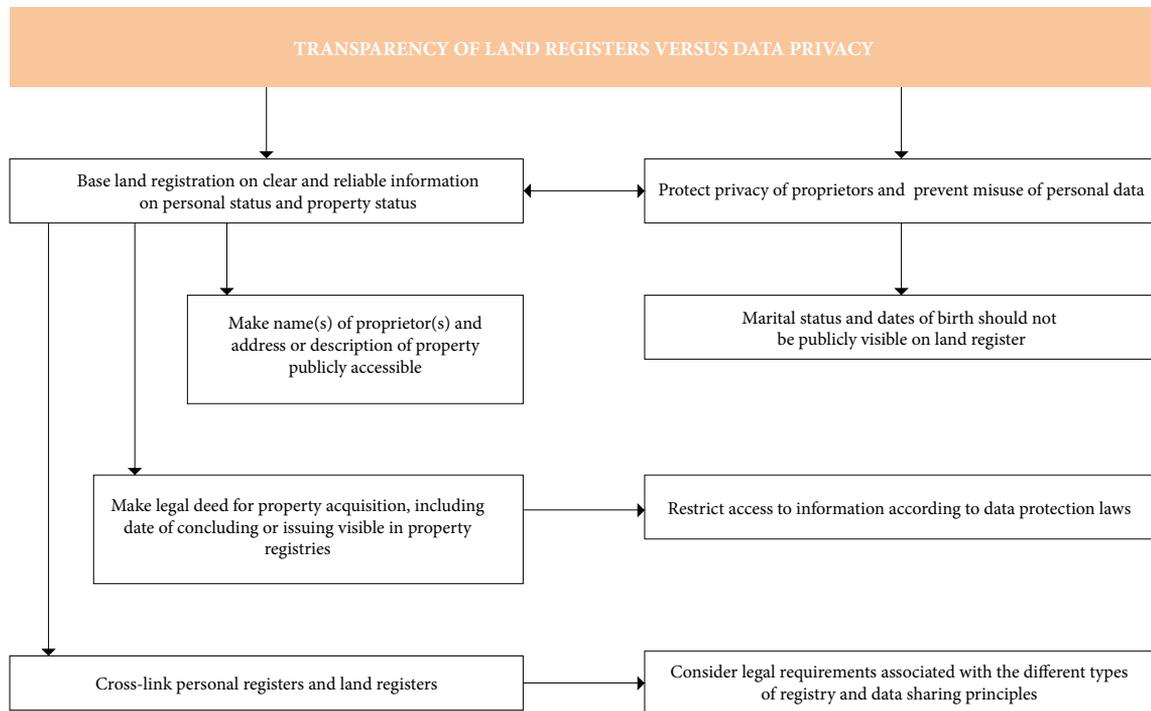


Fig. 3. Data privacy issues connected to land registers.



BIBLIOGRAPHY

Committee on World Food Security. 2012. Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, Rome, Italy.

European Union. 2013. Access to Base Registries. Good practices to interconnect base registries across sectors and across borders, ISA Coordination Group meeting.

European Union of Rechtspfleger. 2008. Green Paper for a European Rechtspfleger.

FAO & GIZ. 2020. Achieving SDG indicator 5.a.2 in the Western Balkans and beyond, Rome, Italy.

FAO & GIZ. 2019. Guidelines on Strengthening Gender Equality in Notarial Practices in Southeast Europe, Rome, Italy.

FAO. 2013. Governing Land for Women and Men, Governance of Tenure Technical Guide No. 1, Rome, Italy.

FAO. 2017. Improving ways to record tenure rights, Governance of Tenure Technical Guide No. 10, Rome, Italy.

FAO. 2017. Creating a System for Registration of Tenure Rights and First Registration, Governance of Tenure Technical Guide No. 9, Rome, Italy.

FAO. 2018. Realizing women's rights to land in the law – A guide for reporting on SDG indicator 5.a.2, Rome, Italy.

Kenney, N., Llatja, A., Goelema, M., Tonchovska, R., Tomasic, L., Vidar, M., Wengenmayer, B. 2019. Achieving SDG Indicator 5.a.2 in the Western Balkans: The Role of Notaries, Paper prepared for presentation at the “2019 World Bank Conference on Land and Poverty” The World Bank - Washington DC, March 25-29, 2019.

A. Llatja, M. Vidar, M. Goelema, N. Kenney, R. Tonchovska, Achieving SDG indicator 5.a.2 in the Western Balkans: Partnerships for gender equality in land ownership and control, Paper prepared for presentation at the “2019 World Bank Conference on Land and Poverty” The World Bank - Washington DC, March 19-23, 2018.

Peristeridou, C. (2015). The principle of legality in European criminal law. Intersentia. Cambridge, UK.



ISBN 978-92-5-133846-9



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CB2857EN/1/02.21